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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
BOARD MEETING

GLENDALE CIVIC AUDITORIUM
1301 NORTH VERDUGO ROAD
GLENDALE, CALIFORNIA

WEDNESDAY, MARCH 21, 2001
9:35 A.M.

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

A P P E A R A N C E S

BOARD MEMBERS PRESENT:

LINDA MOULTON-PATTERSON, Chair
DAN EATON
STEVEN R. JONES
JOSE MEDINA
MICHAEL PAPARIAN
DAVID A. ROBERTI

STAFF PRESENT:

BONNIE BRUCE, Interim Executive Director
KARIN FISH, Chief Deputy Director
KATHRYN TOBIAS, Chief Counsel
ELLIOT BLACK, Legal Counsel
YVONNE VILLA, Board Secretary
DEBORAH MCKEE, Board Administrative Assistant

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1 P R O C E E D I N G S

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: Okay. I'd like
4 to welcome you back to our March meeting and we're going
5 to get started now.

6 Please, I ask you again to take cell phones and
7 pagers out of the auditorium.

8 And we, I'd like to ask Ms. Nauman to come --
9 oh, ex-parte first. Mr. Eaton.

10 BOARD MEMBER EATON: None to report.

11 BOARD CHAIR MOULTON-PATTERSON: And then we've
12 got to call.

13 BOARD MEMBER JONES: None to report.

14 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina.

15 BOARD MEMBER MEDINA: None to report.

16 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

17 BOARD MEMBER PAPARIAN: Yeah, I said good
18 morning to John Cupps.

19 BOARD CHAIR MOULTON-PATTERSON: Okay. And I
20 have none.

21 Secretary, would you please call the roll?

22 BOARD SECRETARY VILLA: Eaton.

23 BOARD MEMBER EATON: Here.

24 BOARD SECRETARY VILLA: Jones.

25 BOARD MEMBER JONES: Here.

1 BOARD SECRETARY VILLA: Medina.

2 BOARD MEMBER MEDINA: Here.

3 BOARD SECRETARY VILLA: Paparian.

4 BOARD MEMBER PAPARIAN: Here.

5 BOARD SECRETARY VILLA: Roberti.

6 (No response.)

7 BOARD SECRETARY VILLA: Moulton-Patterson.

8 BOARD CHAIR MOULTON-PATTERSON: Here. We have a
9 quorum.

10 We are going to be starting with Ms. Nauman's
11 group. We're going to skip number seventeen and come
12 back to it.

13 So number eighteen was approved on consent.

14 We'll go right to 19.

15 MS. NAUMAN: Thank you, Madam Chair. Good
16 morning, Madam Chair and Board members, Julie Nauman with
17 the Permitting and Enforcement Division.

18 This item presents discussion of the proposed
19 regulations for the process of board withdrawal on its
20 approval of local enforcement agency designations.

21 The Board will recall that last month we brought
22 forward to you an informational item that reviewed the
23 process by which local governments and then the Board
24 take action to designate and certificate LEA's.

25 And then we talked with you about the evaluation

1 process which occurs normally on a three year cycle. We
2 walked you through the steps of the evaluation and some
3 internal triggers that we've developed administratively
4 that can, that can lead to steps such as administrative
5 hearings, work plans and actions by the Board. And
6 triggers that we have put in place that prompt us to look
7 closely at the LEA performance between those cycles.

8 There were some questions at the briefing about
9 that process, and staff is prepared to review with you
10 any of those steps that you may wish to pursue.

11 But today we're bringing forward another piece
12 of this whole process of LEA certification and
13 designation, and specifically the formal process by which
14 an LEA can be de-designated or de-certified.

15 You'll note again that this is just a discussion
16 item so that you can become familiar with this regulation
17 package, and then we'll be bringing it back to you to
18 request formal approval to begin the 45 day review
19 period.

20 With that I'll turn it over to Gabe Aboushanab.

21 MR. ABOUSHANAB: Good morning, Madam Chair and
22 Board members. My name is Gabe Aboushanab of the LEA
23 program evaluation and assistance section. And also
24 present is Steve Levine who helped in the regulatory
25 language development.

1 The basis of this reg package is 43215 PRC which
2 mandated we develop regs for notice, public hearing,
3 admission of evidence, and final action. And also the
4 Board directed staff to develop a process for orderly
5 transfer of LEA duties and responsibilities when the
6 local government wishes to withdraw its LEA designation.

7 Those have been accomplished in section 18056.

8 And the regs also address subsection B which
9 says that, "Existing LEA actions remain in effect under
10 the jurisdiction of the new enforcement agency."

11 We also have in the proposed regs grounds for
12 Board action over LEA's under section 18085, and the
13 types of Board actions over LEA's described in 18086.

14 And the section when the Board acts as the
15 enforcement agency, which is section 18087.

16 This is a summary of the rulemaking package, and
17 I conclude my presentation and would be willing to take
18 any of your questions at this time.

19 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

20 BOARD MEMBER PAPARIAN: I did bring up several
21 of my items at the briefing, you said you already
22 discussed those. Do you want to just launch into that?

23 MS. NAUMAN: Sure.

24 BOARD MEMBER PAPARIAN: Go ahead.

25 MS. NAUMAN: Would you like to restate? I don't

1 want to just jump right in in the middle, so where would
2 you like us to begin? Because I think you wanted to talk
3 more about the internal process of triggers, I believe,
4 and --

5 BOARD MEMBER PAPARIAN: Right. One of the
6 things that we talked about was that we have on one end a
7 process to work very closely with the LEA's, you know.
8 If we're seeing a little problem there we'll be very nice
9 and work with them. On the other hand, we have this
10 fairly extreme action that's described in this proposal
11 here.

12 And what I would love to see is something in
13 between where, as I've actually seen over the last few
14 months, where there's some chronic problems that need to
15 be dealt with. Maybe it's not to the point where you
16 really want to go through the process of withdrawing
17 their designation, but you want to make it clear that
18 there are some problems.

19 And then on top of that, if there are problems
20 that seem to repeat themselves over time, kind of a
21 chronic failure to adequately do their job, maybe that
22 ought to be one of the triggers that leads to the type of
23 stuff that's described here.

24 I'm not sure that the language is clear enough
25 here to allow that to happen.

1 MS. NAUMAN: Okay. Let me ask Sharon Anderson
2 to respond to that because Sharon was actually
3 responsible for developing what we call our triggers
4 within the division to address exactly the situation
5 which you've just described.

6 MS. ANDERSON: Thank you, Board member Paparian.
7 This is Sharon Anderson, Branch Manager for LEA Support
8 Services.

9 I wanted to let you know that you bring up a
10 very good point, and we appreciate your concern. In our
11 past presentation we may not have made it clear that in
12 doing our internal program in monitoring the triggers, we
13 actually have worked very closely with Monterey County
14 outside of the evaluation cycle where there were some
15 signals to us, via the triggers, that they needed a
16 little bit more of a nudge. And they would be the first
17 one to attest that it did work, and they were actually
18 put on a sort of a modified action plan by us with
19 consequences that if things didn't shape up, you know, we
20 would be looking further into their program.

21 And that wasnot within the evaluation cycle.
22 Because the law does allow us to take a look at whether
23 or not they're maintaining their certification elements,
24 that they have to do certain things to continue being a
25 certified LEA. And that's where we get our authority to

1 go ahead and do this.

2 What we did based on that authority is develop a
3 flow chart that if things get very bad, and we can't nice
4 them to death and give them all the assistance they need,
5 we can actually go into requesting an evaluation to begin
6 at that point. You know, go to the more harder level.

7 And the evaluation process, being a stepped
8 approach, leads up to maybe an administrative conference
9 where everybody gets kind of hauled in to either the
10 Deputy Director or the Executive Director's office. And
11 we talk about the problem with consequences if the
12 problem doesn't get rectified.

13 And then we also find out which problems are in
14 the LEA's control and which things are not within their
15 control. For instance, in Inyo County there was no
16 budget to correct the operations, you know that, we
17 talked about that the last time. There was no money to
18 do it. And finally we shook loose some money. But that
19 was not within the LEA's control, that was sort of
20 something outside of their control, but it looked as
21 though the LEA was chronically poor performing because
22 the facilities weren't in compliance, they were
23 constantly being issued violations. It's like what more
24 can the LEA do? They papered them to death, they papered
25 the operator to death, but still no movement.

1 So short of the Board going in and doing the
2 enforcement agency work, which we did threaten to do,
3 they actually got their ducks in a row, put some money
4 down on the operations, and cleaned up their act, because
5 we actually held the LEA hostage in that situation.

6 So we've got a couple of different scenarios
7 where we actually can take a harder approach. And also
8 within the evaluation procedure, anytime a Board member
9 hears of a finding or has a strong concern, we can look
10 at the facts behind that strong concern and see if it
11 needs to go right into an evaluation or, you know, take
12 the, start taking those steps to go down the road, you
13 know, taking partial or full decertification, to do
14 partial or full decertification.

15 Did I confuse or did I clarify?

16 BOARD MEMBER PAPARIAN: Once you go through the
17 evaluation, what is your, what's your hammer, if you need
18 it, other than withdrawal of the, you know, going through
19 the process described here?

20 MS. ANDERSON: Yeah, the hammer is, first step
21 is administrative hearing if the problems don't get
22 corrected. In other words, three strikes you're out kind
23 of a thing. You know, there's a stepped approach.

24 The evaluation, if you don't take action that
25 you've promised you say you'll do as an LEA under the

1 work plan, then you come in for an administrative
2 hearing.

3 If that doesn't work, then we actually have an
4 agenda item just like we're doing right here -- well not
5 like this agenda item, but one that would actually talk
6 about the LEA's performance, and then you get to hear
7 both sides. That would be the next step, you get to hear
8 both sides; what we've done; what they've done; and where
9 the differences lie. And then you make a decision on
10 whether or not you want to fully or partially decertify
11 that LEA. That's the process.

12 BOARD MEMBER PAPARIAN: Yeah. And I guess what
13 I'm wondering is should there be something in between?
14 Because if it gets to the point where we're deciding
15 whether or not we want to go forward with
16 decertification, should there be something that's short
17 of that?

18 MS. ANDERSON: Well, we do have a letter writing
19 program that we can institute, and it is part of the
20 branch evaluate, it's part of the branch
21 responsibilities.

22 Go ahead, Julie.

23 MS. NAUMAN: I think as a practical matter, Mr.
24 Paparian, to give them the option of calling an LEA in
25 for an administrative hearing is a pretty serious step,

1 and I think it's taken pretty serious by the LEA's. So I
2 think they consider that, you know, kind of that next
3 step.

4 You know, it may not have a penalty attached to
5 it, and it may not have some punishment attached to it,
6 but it's a pretty negative event to be called into an
7 administrative hearing on your performance.

8 You know, the other thing I can offer, and we
9 talked about this at the briefing, is we have these
10 internal triggers established within the branch because
11 several of the, excuse me, in the division, because
12 several of the branches within the division are involved
13 with the LEA's work; so it's really important for all of
14 our managers within P and E to be communicating with each
15 other about things that they are observing relative to
16 LEA performance.

17 And so these triggers were established so that
18 if Mark De Bie in the Permitting and Inspection Branch
19 sees some activity that suggests to him that the LEA's
20 having problems, he is then triggered to come and talk to
21 Sharon's branch, the evaluation unit, to begin that
22 dialogue, to begin this process which can lead through
23 the steps that we've talked about.

24 And that process goes on on a regular basis.
25 And we are monitoring the performance of the LEA's very

1 closely. And I can assure you that I've got my eye on a
2 handful. And I'm not ready to bring them before the
3 Board, but I can tell you I'm thinking very seriously
4 about some of the steps that have been described here.

5 So at that point when I need your support, I
6 will bring those situations forward to the Board and ask
7 you to take action.

8 BOARD MEMBER PAPARIAN: Yeah. So I guess part
9 of what I'm asking is could you use an additional tool
10 short of bringing them to the Board, and I think I'm
11 hearing you say no, you don't need an additional tool.

12 MS. NAUMAN: At this point I would say no. I
13 think we've got effective steps. And, you know, you
14 might want to hear from the LEA community as well whether
15 they feel that these steps are sufficient to ensure that,
16 you know, they get the action from their supporting local
17 government to do their job as we envision it.

18 BOARD MEMBER PAPARIAN: The other thing that I
19 brought up was the, getting to the point where, as is
20 described here, where we could decertify the LEA.

21 You have a number of criteria, and you have a,
22 kind of a, the chronic failure to do the job well. I
23 don't know how to describe that, but that's not, that's
24 not one of the things that's in here essentially.

25 You have some very specific things about failing

1 to maintain compliance with certification requirements,
2 failing to enforce facility compliance and so forth,
3 failure --

4 MS. ANDERSON: Actually the failure to maintain
5 compliance with certification is the key to the question
6 you just asked. Because through the triggers and also
7 through our internal flow chart, which all the LEA's have
8 by the way, and it's on our website, that's where we
9 start making decisions on if they're not maintaining
10 compliance with their certification, which means they
11 have the staffing, they're doing their inspections,
12 they're, you know, have the funding, and every element
13 they have to be a certified LEA through the annual review
14 of their enforcement program plan.

15 If they cannot maintain their certification,
16 then we bring forward an item to you if we can make that
17 finding. But we would have to do the, we would actually
18 have to do the front work on that as usual. We don't
19 bring somebody in without them really knowing about it,
20 you know. We make our concerns known through a stepped
21 process.

22 BOARD MEMBER PAPARIAN: What if they're, say,
23 regularly sending us, signing off on permit packages as
24 complete that aren't complete. Would that fall within
25 that category?

1 MS. NAUMAN: Yes. I was looking at section
2 18085, and in a couple of places that talks about
3 actions, including but not limited to. So I think that
4 gives us the latitude to look at the overall performance.
5 And if we see deficiencies in any areas of
6 responsibility, then I think we have the authority to
7 address that performance.

8 BOARD MEMBER PAPARIAN: Does legal counsel agree
9 with that, that the not limited to allowing us to go into
10 those areas?

11 CHIEF LEGAL COUNSEL TOBIAS: State that again?

12 BOARD MEMBER PAPARIAN: I'm asking basically if
13 chronic bad work could lead to this process where we
14 would consider decertifying an LEA?

15 CHIEF LEGAL COUNSEL TOBIAS: Sure.

16 BOARD MEMBER PAPARIAN: Julie is suggesting the
17 language in here, in 18085 at the top, where at the end
18 of that first sentence before the colon, the "including
19 but not limited to," would allow us to add something like
20 that --

21 CHIEF LEGAL COUNSEL TOBIAS: No, I would agree
22 that I think that allows additional tools to be crafted
23 at that time depending on the circumstances. Because I
24 think it's been hard in each case where the circumstances
25 have been so different for each of the ones that have

1 come up so far, everything from a CEQA problem to other
2 types of issues. So it's really hard now to set up
3 regulations to, you know, try to craft something for
4 things that we really can't anticipate. So I think that
5 allows that flexibility.

6 MS. NAUMAN: And in looking at subsection B of
7 that same section where it says, Failure of the LEA to
8 perform more and more of its duties," and then it lists
9 the duties which really are kind of a full complement of
10 what LEA's do, permitting and closure, post closure,
11 responsibility for inspections, responsibility for
12 enforcement, you know. Any of those things can encompass
13 the type of work that you've described.

14 CHIEF LEGAL COUNSEL TOBIAS: I would agree with
15 that.

16 BOARD MEMBER PAPARIAN: Thanks.

17 BOARD MEMBER MEDINA: Excuse me. I wonder if
18 you could do a flow chart for the decertification
19 process? I think that the one you did for designation
20 and certification is very good and I wonder if we could
21 have another track that shows the decertification.

22 MS. ANDERSON: Certainly.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
24 Medina.

25 We do have a speaker. Mr. Jones, did you want

1 to speak before the speaker?

2 BOARD MEMBER JONES: I just had one follow-up
3 question to Mr. Paparian's. At some point in those
4 questions he said is there a step in between, and I'm
5 wondering about (6) (C) that says that there could be
6 probation or some type of a, some type of a work plan.
7 Does that have to come in front of the Board or is that
8 done at the, at your level? It comes in front of the
9 Board?

10 MR. ABOUSHANAB: Yeah, it does. It comes in
11 front of the Board because it's a Board decision to take
12 action.

13 MS. NAUMAN: Well I think that there's two types
14 of work plans. There's the work plan that Sharon
15 described which is kind of part of the triggers, and that
16 does not have to come before the Board. And we have put
17 a number of jurisdictions on that type of work plan.

18 If you're looking at 18086, this is when you're
19 in the process of decertification, and it's saying that
20 the Board is making the finding, then you can take one or
21 more of the following actions and you can establish a
22 work plan.

23 So there's really two opportunities to invoke
24 the work plan option.

25 BOARD MEMBER JONES: All right. And then just,

1 when we talk about LEA's that don't put forward work,
2 that's usually based, not always, but in my four and a
3 half years here and twenty years in dealing with this
4 place, a lot of those times, I'm not going to say all of
5 the time, but a lot of those times that's staff's
6 portrait of the process coming forward.

7 Because during the working of putting the RDSI
8 together, putting the permit together, doing this or
9 that, staff from the Waste Board suggests that certain
10 things should be in the document or whatever, and the LEA
11 has a difference of opinion.

12 But that comes forward to us as not complete
13 work. So, or it gets, it gets portrayed as not being
14 complete. Or if a CEQA document gets put out by a
15 planning department in a city or county, and Waste Board
16 staff comes up with its questions, and they don't all get
17 either responded to or included, that's another one that
18 I've seen where staff feels that it's incomplete work.

19 And I don't see a check and balance here.
20 Because it, we're telling the LEA that they're going to
21 be de-certified if they don't do everything with CEQA.
22 It's, CEQA's not, they're not always the lead agency in
23 CEQA.

24 And we have seen permits come forward where
25 staff has a very different view than everybody in the

1 local jurisdiction, and yet we deem it as not being
2 adequate.

3 So there needs to be some balance here, it seems
4 to me where, and maybe the hearing is the place, but it,
5 it, it kind of seems like the LEA's have been getting
6 bashed around pretty good here lately. And I think that
7 we need to make sure that the rules are kind of fair.

8 MS. NAUMAN: Mr. Jones, to respond to that. I
9 think there are kind of two issues here. One is the
10 so-called completeness of the application; and the other
11 is, you're right, that dialogue that goes on that we may
12 need more information.

13 A couple of months ago the Board asked staff,
14 and we'll be getting to do this in the items that we
15 bring forward in April and beyond, to describe for you in
16 the agenda item what was submitted.

17 I've also been talking with the staff about the
18 idea of putting out a letter of advice, if you will, not
19 maybe an advisory, but a letter to the LEA's to clarify
20 what we are looking for in an application package, and
21 trying to shed some clarity on our expectations so that
22 we can then hold the LEA's to that standard.

23 Now, it may be difficult to do that, but I think
24 we owe it to the LEA's to be as specific as we can if
25 we're going to be scrutinizing their work and making some

1 judgments, if you will, about completeness.

2 So I would like to take, make that effort to
3 clarify for them exactly what we're looking for so that
4 when we report to you on the status of that submittal,
5 it's clear what it was and what it wasn't and how close
6 it came to the mark. Because I think there are instances
7 where clearly the application package is incomplete.

8 And there are times, however, where the package
9 is, you know, complete and we'd be determining that, but
10 yet there's still additional information. And I think
11 sometimes that's where the CEQA issues get raised in that
12 subsequent discussion about needing more information.

13 BOARD MEMBER JONES: Well that, and I think we
14 get packages in front of us that one of the members will
15 say when did this, when did you get this in this form?
16 And it was six days ago, but it was six days ago because
17 it was, they were responding to questions that came up.

18 MS. NAUMAN: And that is --

19 BOARD MEMBER JONES: And that has to be told to
20 the Board. I've been a victim of that before in front of
21 this Board.

22 MS. NAUMAN: And I understand that, and that's
23 not, you know, our intent at all. We understand that
24 there are times when we ask for information and we make
25 that clear that we've asked for it and we've received

1 it.

2 But I think the issue Mr. Paparian was
3 addressing is what are you getting up front?

4 BOARD MEMBER JONES: Right.

5 MS. NAUMAN: So I make that distinction. I'm
6 also reminded by the staff that in the toolbox that is
7 going on-line that we're building incrementally, we will
8 have a section on completeness and submittal of
9 application packages.

10 BOARD MEMBER JONES: And that will have what? I
11 think, I like these reg package, I like this reg
12 package. What I just want to have some dialogue about
13 and make people aware of is the issue that I just brought
14 up, because there is a timing issue. And people that
15 don't go through the permit process don't understand. I
16 mean they don't, it takes a while to understand that
17 dynamic of back and forth.

18 But I think the other issue that needs to come
19 forward because we're talking about having public
20 hearings on what is either cause to decertify or put on a
21 work plan or something like that, is we've got to have
22 some pretty clear standards so that LEA's and Board staff
23 don't get caught up in politics.

24 Because we have a whole section here of the
25 public's right, and I agree that they have the right to

1 offer non-factual testimony or whatever the right word
2 is, it's not evidentiary, it's just their opinion.

3 We've got a lot of contentious issues throughout
4 the state that get politicized. And in that, in that
5 process, sometimes fiction becomes fact.

6 So I think that, that LEA's and Board staff need
7 to have a real clear -- and I think you basically do --
8 but a real clear set of what's included and what's not
9 included.

10 When I read about operators that notify LEA's of
11 problems at a landfill, and then are accused of somehow
12 breaking the law, that's exactly what an operator is
13 supposed to do when they see something like that. And
14 yet when it becomes front page as them breaking the law,
15 I have a hard time with that, and I wonder when that
16 comes in front of us on these types of issues that can
17 get that political.

18 We've got to have a pretty strict standard of
19 criteria so that we can sort of make sure that fact
20 doesn't get overwhelmed by fiction. So that's a
21 challenge, but I think it's important or we're never
22 going to have any sites.

23 BOARD MEMBER PAPARIAN: Madam Chair, I just
24 wanted to mention, I understand and actually agree with
25 much of what Mr. Jones is suggesting, but the one thing

1 I'd like to throw out there is that in some situations
2 turning yourself in for something that may be a
3 violation, I don't think that necessarily should
4 eliminate further action by us or other authorities.

5 If you've broken the law in some way and you
6 turn yourself in, you know, the fact that you've turned
7 yourself in may be a factor in determining punishment,
8 but still you've broken the law in some way.

9 I think I understand what you're saying. You're
10 saying for a lot of things out there, they aren't
11 necessarily really serious illegal violations, and
12 they're just, the operators are just letting the LEA's
13 know what's going on at the appropriate time, and that's
14 as it should be.

15 BOARD MEMBER JONES: The delivery of a
16 restricted waste to a landfill that gets caught in the
17 load checking process and gets pulled out away from the
18 face where that operator did not deliver it, and then
19 notifies the LEA, and somehow that operator is breaking
20 the law is, does not make sense to me.

21 And that's just my, you know -- but I agree, if
22 you're breaking the law all the time and you know you're
23 breaking the law, and you just go turn yourself in, then
24 I agree.

25 But there's different levels of that going on,

1 and I worry about it when it's out of the operator's
2 control, and he's done his job as part of an established
3 plan, and then gets accused of breaking the law. That's
4 insanity, you know.

5 BOARD CHAIR MOULTON-PATTERSON: We do have one
6 speaker. I'd just like to say I think, you know, the
7 process is ever changing. I think you're doing, you
8 know, from my perspective you're doing a really good job,
9 but we need to have that balance.

10 I think we need to have high standards for our
11 LEA's, but I also think if they're not doing something
12 right, we need lots of warning and lots of mentoring or
13 whatever to do the right thing. So I'd really like to
14 see that continue.

15 Mike Schmaeling, Santa Barbara County. Did
16 Mispronounce it? Excuse me. You can correct it when you
17 get up here.

18 MR. SCHMAELING: Mike Schmaeling with Santa
19 Barbara County Environmental Health and chair of the EAC.

20 As I put on my speaker slip up there that we do
21 support these regulations, but that's with a quantifying
22 explanation.

23 Board staff has worked very closely with the
24 LEA's over the years. If there is a problem they have
25 worked very closely with us in helping us correct that

1 problem.

2 My concern with these regulations is that they
3 need to be a little more specific or we need an LEA
4 advisory that would specify when certain actions and what
5 those actions. I think the request for a flow chart
6 would be very crucial in helping to define those
7 processes.

8 My fear with the way that they're currently
9 written is that I find them rather open-ended. We need
10 some specific accounts.

11 In other words, if an LEA got into a beef with
12 an operator over whether this was a violation or wasn't a
13 violation, and that operator was coming to the Board and
14 lobbying very hard that this LEA should go through this
15 process of being de-certified, I would rather have that
16 in a quantifiable thing where this step has been taken
17 working with Board staff to look at the problem, make
18 that evaluation; and then we can come together to you
19 guys with what the proper recommendation is.

20 But as far as the decertification regs, we
21 support those. If there's LEA's out there that aren't
22 doing their job, they need to be looked at and evaluated.
23 And as EAC chair I'll do whatever I can to help them out
24 to comply.

25 Thank you very much.

1 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank you
2 very much for coming.

3 Okay. Anything else, Board members, on that
4 item?

5 MS. NAUMAN: Thank you very much for the
6 questions.

7 Item 20 is consideration of approval to formally
8 notice proposed regulations for a non-hazardous
9 non-putrescible industrial solid waste disposed at
10 permitted class one hazardous waste disposal facilities.

11 The Board will recall that in May of 2000 you
12 adopted emergency regulations that were approved by the
13 Office of Administrative Law.

14 We have since received an extension from the
15 Office of Administrative Law on this package; however
16 that extension expires in May, at the end of May of this
17 year. So we are asking the Board today to approve the
18 beginning of the 45 day review and comment period.

19 As we discussed at the briefing when we brought
20 this package forward to you in December, there were still
21 some issues that stakeholders wanted to have further
22 discussions with us at the staff level about.

23 We did engage in those discussions and resolve
24 virtually all of the issues except that of the question
25 of what is the appropriate financial assurance mechanism

1 to accompany our permits, specifically whether captive
2 insurance would be allowed or not.

3 Again, we would suggest that we continue the
4 dialogue on that issue during the 45 day review and
5 comment period, but in order to avoid losing the
6 emergency regulations with the expiration of the period
7 at the end of May, we would respectfully request that you
8 allow us to begin the 45 day comment period.

9 I'm now going to ask Virginia Rosales to walk
10 through the changes that have occurred on what we're
11 presenting, and I'm sure you'll have some public
12 testimony.

13 BOARD CHAIR MOULTON-PATTERSON: Good morning.

14 MS. ROSALES: Good morning, Madam Chair, Board
15 members. Virginia Rosales with the Permitting and
16 Inspection Branch.

17 I'll just immediately jump in and start walking
18 you through the changes on the proposed regulations here.

19 There were the five issues that came up at the
20 Board meeting, the December Board meeting. And those
21 issues evolved around the definition of the hazardous
22 waste, the non-hazardous waste, excuse me, the
23 non-hazardous, non-putrescible, industrial solid waste;

24 The reporting and recordkeeping requirements;

25 The use of the captive insurance as a financial

1 assurance mechanism;

2 The use of the alternative daily cover;

3 And whether a limit should be imposed on the
4 amount of non-hazardous waste accepted at these class one
5 facilities.

6 The definition has been modified to exclude the
7 derivation and criteria content. And in short, these two
8 subdivisions provide that the non-hazardous,
9 non-putrescible waste, in addition to other
10 characteristics, must constitute or be derived from
11 either industrial waste or hazardous waste sites, and
12 must contain one or more hazardous constituents, although
13 below DTSC's threshold to be deemed hazardous waste.

14 The admission of these two subdivisions broadens
15 the range of the non-hazardous, non-putrescible waste
16 that may be accepted at these facilities.

17 This change was based upon DTSC and the State
18 Water Resources Control Board requirements which preclude
19 the acceptance of waste that would interact with other
20 waste or with the containment system at these facilities.

21 The number two issue. The emergency regulations
22 are silent on the reporting and recordkeeping
23 requirements.

24 In consultation with the Board's Planning and
25 Local Assistance Division, language has been added to the

1 recordkeeping requirements that link the disposal
2 reporting system requirements for landfills to Title 14
3 at these class one facilities operating under the
4 registration permit.

5 The third item, the emergency regulations are
6 silent on the financial assurance requirements.

7 In consultation with the Board's financial
8 assurance section, a new section has been added to
9 clarify the link to the Title 27 financial assurance
10 requirements.

11 Currently they are proposed regulations to amend
12 the standards for acceptance of the insurance as a
13 financial assurance demonstration.

14 These proposed regulations would clarify the
15 financial assurance requirements for all solid waste
16 disposal facilities and prohibit the use of captive
17 insurance.

18 The Board item of concern was the use of
19 alternative daily cover.

20 The emergency regulations and the proposed
21 regulations defer the cover standard to DTSC or the Air
22 Board, whichever is more stringent. No changes have been
23 made to the regulations in this aspect.

24 The fifth item raised was whether there should
25 be a limit on the amount of hazardous waste that the

1 class one facilities receive. Through our discussions
2 with DTSC, the LEA's, industry representatives, and Board
3 staff are unable to determine a public health and safety
4 or environmental basis to support placing a cap on the
5 amount of waste received at such facilities.

6 And in summary, the following changes have also
7 been added based upon our workshop and another meeting
8 with DTSC in February, 2001. We've added language to
9 section 17369 to clarify that if there are any other
10 non-hazardous waste accepted that do not meet the
11 definition of the non-hazardous, non-putrescible
12 industrial waste, a full solid waste facilities permit is
13 required.

14 The question was raised whether household
15 hazardous waste are excluded from the disposal under the
16 registration permit. Since household hazardous wastes
17 are a subset of household waste, which are expressly
18 excluded in the definition of non-hazardous,
19 non-putrescible industrial solid waste, they are excluded
20 from disposal under the registration permit. However,
21 this does not preclude them from accepting the waste
22 under their DTSC permit.

23 Under the recordkeeping requirements, the
24 accessibility of the records has changed from five years
25 to three years for consistency with DTSC. Additionally,

1 since there is no provision under the requirements of
2 DTSC to allow for the records to be maintained elsewhere,
3 language has been added to indicate that, for the purpose
4 of the LEA's record review, copies of the records may be
5 maintained at an alternative site.

6 Finally, the requirement for the operator to
7 provide notice to the LEA on the intent to close a waste
8 management unit has changed from 30 to 60 days. Again,
9 this is for consistency with DTSC requirements, and to
10 eliminate any possible confusion by the operators.

11 In conclusion, the Board may decide to direct
12 staff to begin the 45 day comment period without revision
13 to the regulations; modify the proposed regulations and
14 notice of proposed regulations for the 45 day comment
15 period; or modify the proposed regulations and begin
16 another informal comment period.

17 Staff are prepared to move forward with option
18 one and recommend -- that we move forward with the 45 day
19 public comment period without revisions to the proposed
20 regulations.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you.
22 Questions?

23 Mr. Paparian.

24 BOARD MEMBER PAPARIAN: Yeah. Ms. Nauman, you
25 suggested that we should essentially defer our decision

1 on the direction we want to go with regards to things
2 like captive insurance for, until the end of the 45 day
3 process.

4 MS. NAUMAN: No, let me, let me clarify. We're
5 hoping that you accept staff's recommendation that you
6 move forward with the 45 day review period based on the
7 current draft of the regulations, and the current draft
8 of the regulations, by linking back to the other
9 regulation package, would prohibit the use of captive
10 insurance.

11 If you do not agree with that, you can direct us
12 to change the reg package to allow captive, or you can
13 choose to not decide that issue today and allow it to go
14 through the 45 day review period, and then decide the
15 policy question.

16 BOARD MEMBER PAPARIAN: If we allowed it to go
17 through the 45 day period, what would come back to us
18 would be staff's draft proposed regulations, or would it
19 be something that included various options for the Board
20 to decide on?

21 MS. NAUMAN: What would come back is comments
22 that were received during the 45 day review period, and
23 staff's response to those comments. And then the Board
24 would have just full discretion over making changes in
25 the package. If you made changes in the package then we

1 would send it out for an additional fifteen day review
2 period.

3 So you have a number of opportunities to
4 continue to grapple with this issue if you are not able
5 to reach a decision today. We're hoping that you accept
6 staff's recommendation, but we know that the stakeholders
7 do not agree with staff's recommendation.

8 BOARD MEMBER PAPARIAN: Yeah. I know that the
9 captive insurance issue is one that seems to be the most
10 controversial aspect at the moment of the package.

11 MS. NAUMAN: I think that's correct.

12 BOARD MEMBER PAPARIAN: And as I'm understanding
13 the issue, there are basically three positions, as I
14 understand it, one is what's in the regulations proposed
15 here which would prohibit the use of captive insurance at
16 the facilities that accept solid waste.

17 The sort of in between position would be one
18 which would suggest that non-captive insurance should be
19 utilized for that portion of the waste stream going into
20 a facility that is solid waste. And then the other end
21 would be to allow captive insurance at such a facility if
22 it's regulated by DTSC. Does that seem to you to be the
23 three positions that are out there?

24 MS. NAUMAN: Starting from the top, yes.

25 The first position is do not allow captive.

1 Your third is essentially defer it to DTSC; and
2 if DTSC allows the use of captive, then we would accept
3 that for the purposes of our permit.

4 I realize that during the briefing we discussed
5 this kind of middle ground of proportional, ninety
6 percent ten percent. Richard Castle in our financial
7 assurance staff is here to address you on that.

8 I am not convinced that that is workable. I
9 think that you either have captive insurance or you don't
10 have captive insurance. Either you accept it as a
11 mechanism that is allowed under federal law and
12 regulation, or you choose not to.

13 And it's, again, staff's position from our
14 financial assurance section that it's kind of an all or
15 nothing kind of thing here; that if the Waste Board
16 believes that their permit should always carry financial
17 assurances that are non-captive, then consistency says
18 those financial assurance mechanisms that apply to our
19 regular solid waste facility permit should be the same in
20 a situation where we have this dual permit.

21 So perhaps I could have Richard elaborate on the
22 reasons why we don't believe that this middle group is
23 really workable.

24 MR. CASTLE: Good morning, Madam Chair and Board
25 members. My name is Richard Castle from the Financial

1 Assurances Section. And I know we got into this
2 discussion briefly at the briefing, and I guess I want to
3 apologize that it got down the road in that way.

4 We've talked to our closure branch also about
5 this issue, and the workability of trying to decide how a
6 facility would or would not be able to cover the solid
7 waste that was mingled with, or the non-putrescible,
8 non-hazardous waste mingled with the hazardous waste is
9 not a situation that could happen unless you were
10 dividing out the facility in a separate cell, and saying
11 that this cell at the facility only accepts hazardous
12 waste and the non-putrescible, non-hazardous waste. And
13 there's a cost associated specifically with that portion
14 of the facility.

15 The plan would have to be rewritten to show
16 that. Everybody would have to review the plan, and
17 approve the cost for that. And actually that's been done
18 at one of the facilities already where they have a
19 separate facility permit for that kind of commingled
20 waste, to throw it into the landfill in total and try to
21 divide out a percentage of the cost is not, in our
22 opinion, a workable solution.

23 It does not represent to the Board, if we were
24 to accept this ten percent or twenty percent non-captive
25 insurance, financial assurance, that doesn't represent to

1 the Board an assurance of the closure of that facility,
2 because the costs associated with that facility is the
3 total cost of the facility, it's not just ten percent or
4 twenty percent. And the Board is here to collect an
5 assurance for the state that the facility will be
6 closed.

7 BOARD MEMBER PAPARIAN: The problem I'm having
8 is that another entity, the Department of Toxic
9 Substances Control, is ultimately going to be responsible
10 for overseeing the closure --

11 MR. CASTLE: Yes.

12 BOARD MEMBER PAPARIAN: -- in that situation,
13 yet we have some responsibility for the solid waste that
14 entered that facility.

15 MR. CASTLE: The Board is in the position of
16 responsibility over this facility because the statutes
17 requiring the Board to issue a permit, any permits issued
18 for disposal by this Board are required by statute to
19 have financial assurances associated with that.

20 You've taken an action previously, and I assume
21 everybody is still in support of that action, to deny the
22 use of captive insurance as an acceptable financial
23 demonstration.

24 So, to issue any level of permit for disposal on
25 this facility, knowing that the Department of Toxic

1 Substances Control would be accepting captive insurance
2 as the financial assurance demonstration; in essence,
3 you're not following suit with what you've already said
4 the actions of the Board would be which would be to
5 decline the use of captive insurance for a financial
6 assurance demonstration.

7 The regulations of the U.S. EPA, the regulations
8 for the Department of Toxic Substances Control, and the
9 regulations for the Waste Board regarding insurance for
10 closure are virtually identical.

11 What's happened is that the Board has taken a
12 very close look at that and determined that captive
13 insurance does not meet the requirements for closure
14 insurance. There are a couple of shortfalls there.

15 One is the discussion of whether or not the
16 insurance provided is insurance in the sense of closure
17 insurance versus insurance in the sense of a surety
18 coverage.

19 The other, which is a pretty clear discussion of
20 insurance as provided by a captive insurer is not
21 transferrable to a subsequent owner or operator of the
22 facility, regardless of the abilities of the captive
23 insurer itself.

24 The U.S. EPA, Toxics, and ourselves all require
25 that that insurance coverage be transferrable to the next

1 operator if there is such an operator in the future. And
2 captive insurance can't meet that, the Board has made
3 that determination, and all we're asking today is that
4 the regs go forward saying that if we're issuing a permit
5 on that facility we stay consistent with our financial
6 assurance requirements.

7 And we will continue to work with the Department
8 of Toxics Substances Control to work through the
9 difference regarding why they are still accepting captive
10 insurance, and why we have come to the conclusion to
11 exclude the use of captive insurance.

12 BOARD MEMBER PAPARIAN: Madam Chair, I'll
13 probably have some more questions in a few minutes.

14 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
15 you. Please note that Senator Roberti is here.

16 Senator Roberti, do you have any ex-partes?

17 BOARD MEMBER ROBERTI: No ex-partes, thank you.

18 BOARD CHAIR MOULTON-PATTERSON: We'll move to
19 our speakers, thank you. Chuck White followed by Jess
20 Juarez.

21 MR. WHITE: Chuck White representing Waste
22 Management. I personally and have others with Waste
23 Management worked closely with the Board and staff over
24 the last several months to develop a final rulemaking
25 package that we hope can be adopted with respect to this

1 activity. And our primary concern is how it would affect
2 the operation of our Kettleman Hills facility which is
3 primarily a, which is a hazardous waste facility. I'll
4 get into a little more detail on that.

5 We do have a hazardous waste cell at, several
6 cells actually, but one land disposal cell at the
7 facility. There is not any putrescible solid waste or
8 municipal solid waste that goes into that hazardous waste
9 cell, but there is about five to ten percent per year of
10 industrial type solid waste that is co-disposed in that
11 cell at the request of our customers who generate this
12 waste. And it's for a variety of reasons that the
13 customers may wish to do it that way.

14 We also have a separate solid waste class two
15 cell at the facility. It is fully regulated by the Board
16 and is in full compliance with the Board's requirements,
17 including financial assurance.

18 With respect to this regulation package that you
19 have before you today, we've reviewed it, we may offer
20 other comments during the 45 day period, but for the most
21 part we're fully in support of the reg package, with one
22 exception, that being the financial assurance provision
23 that was referred to during the staff presentation.

24 As we read that section it basically requires a
25 financial assurance mechanism for that entire hazardous

1 waste cell to comply both with the Department of Toxics
2 regulation for that complete hazardous waste cell, and
3 also comply with this Board's financial assurance
4 regulations for that cell if it takes any amount of
5 solid, industrial solid waste into it.

6 We're concerned that this is duplicative and
7 inconsistent and a potential for inconsistent because
8 both the DTSC financial assurance regulations and your
9 regulations don't read exactly consistent. But our
10 primary concern has to do, of course, with that captive
11 insurance issue.

12 Anyway, we think it could lead to confusion.
13 And we believe it's probably inconsistent with the
14 legislative intent of AB 1220 of several years ago where
15 state agencies with respect to solid waste facilities
16 were charged with eliminating and reducing duplication
17 and overlap between their various regulatory programs.

18 And we think the two sister agencies imposing
19 similar but different regulatory requirements on the same
20 unit, same facility is, is, is duplicative and not
21 consistent with that legislative intent.

22 We don't have any problem with respect to having
23 a solid waste facility permit on this cell at Kettleman,
24 this hazardous waste cell with reference to the
25 acceptance, the recordkeeping, the inspection, the

1 reporting, the payment of the fees, we don't have any
2 objection to that.

3 But once the material is disposed into the cell,
4 into the hazardous waste cell, it's our belief that for
5 all practical purposes that the entire cell is a
6 hazardous waste cell, the entire contents is hazardous
7 waste, and is subject to regulation by the department.

8 So you have this facility, and if you have
9 hazardous waste coming in the hazardous waste acceptance
10 process is regulated by the DTSC.

11 If you have solid waste coming in and it's, the
12 acceptance is regulated through your permit and process,
13 but once it all goes into the same hole in the ground and
14 gets regulated by the Department of Toxics, that entire
15 waste mass is, for all practical purposes, hazardous
16 waste, and is completely covered by the regulations of
17 the Department of Toxics Substances Control, including
18 the operation standards, design standards, and financial
19 assurance.

20 And we believe it is really appropriate for this
21 Board to defer to, the regulation of that cell, that
22 disposal unit through your sister agency, the Department
23 of Toxic Substances Control.

24 No waste is ever going to come out of that cell.
25 If it ever were to come out it would be anything other

1 than a hazardous waste.

2 And so, again, my point is, once disposed in
3 that cell, regardless of whether it was originally
4 hazardous waste or originally solid waste, it is for all
5 practical purposes solid waste.

6 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti
7 has a question.

8 MR. WHITE: Sure.

9 BOARD MEMBER ROBERTI: Yeah, I agree with you
10 that once it's commingled there's no way it's not going
11 to be considered hazardous waste. The problem, however,
12 for this agency, as I see it -- and if you or staff find
13 that my perception is wrong, please tell me.

14 The problem as I see it is that there are
15 specific health problems that the public should be
16 concerned about for substances like, substances such as
17 MSW, that are not the same as the health problems that
18 might be associated with toxics. And maybe in some cases
19 just as severe, it's just their, it's not a toxic
20 Chemical, it may be biological.

21 I'm nervous that we adopt the more lenient
22 policy of Toxics, for reasons that I still don't
23 understand why they have it, and if there is an outbreak
24 of a health problem related to MSW, whether it touched
25 toxics or not, the overwhelming public perception and

1 condemnation is going to be on this Board for not
2 regulating substances under its control; if, for example,
3 the health problem is not chemicals in the air but is
4 some bacteriological problem because of MSW.

5 So I don't, I hope this Board does not adopt
6 regulations which reduce our oversight on closure when
7 MSW is involved. Now, is my perception right or wrong,
8 or am I making just an ideological point, I don't know.

9 But put yourself in my shoes as a Board member.
10 If we have a bacteriological outbreak, there is
11 absolutely nobody in the public who is going to say, "Oh,
12 no, no, no. It would have touched some chemical, and
13 therefore it was not their jurisdiction anymore, or they
14 closed it."

15 MR. WHITE: If I may try to respond to that,
16 senator, you raised a good point, there's no doubt about
17 it. I guess the distinction I was drawing is that we're
18 not talking about municipal solid waste. This facility
19 cannot take municipal solid waste, cannot take
20 putrescible waste, cannot take organic waste at all.

21 The only kind of solid waste that we're talking
22 about here is material that contains exactly the same
23 constituents that are in hazardous waste, but at
24 concentrations so low that they're not regulated as
25 hazardous waste. We're typically talking about inorganic

1 chemical compounds, perhaps some organic chemical
2 compounds, but that are below hazardous waste levels. So
3 being below hazardous waste levels, they're not regulated
4 in the regs --

5 BOARD MEMBER ROBERTI: And the regs we are
6 suggesting only deal with quantifiable differences as
7 between what we take in and what a toxics facility,
8 hazardous waste facility would take in and not the
9 qualitative difference. Does staff understand what I'm
10 trying to get it?

11 MS. NAUMAN: It is a qualitative difference. I
12 mean Chuck has described a type of --

13 BOARD MEMBER ROBERTI: Yeah. Maybe if it's
14 Safety Clean, is that the entity under immediate
15 consideration, that's the point. But I'm fearful that
16 our regs go beyond, the proposals go beyond a
17 quantitative difference and actually go into the
18 qualitative kinds of materials that this Board has to
19 regulate.

20 MS. NAUMAN: Senator, there's various types of
21 waste, let me see if I can help here.

22 BOARD MEMBER ROBERTI: Yes.

23 MS. NAUMAN: Municipal solid waste is what we
24 typically deal with when we're dealing with solid waste
25 facility permits. That's not at issue in this package.

1 Then step up or down, whichever way you want to
2 go, to kind of the middle ground which is what we're
3 discussing here, this in non-industrial non-putrescible
4 solid waste, and then the ultimate step is hazardous
5 waste.

6 So we're really talking about the combination of
7 those latter two, municipal solid waste isn't even in
8 this equation.

9 BOARD MEMBER ROBERTI: Okay. Give me, give me
10 -- well we've been through discussions on, I don't know,
11 I forget if it's non-putrescible or putrescibles,
12 whatever, give me some, on that middle ground give me
13 examples of the kinds of things that we're talking about.

14 MS. NAUMAN: Like a contaminated soil.

15 BOARD MEMBER ROBERTI: Contaminated by what
16 though?

17 MS. NAUMAN: Chuck, why don't you describe the
18 kinds of dirt.

19 MR. WHITE: We could have various types of lead
20 contaminated soil that a generator is worried that may at
21 some point in time may be regulated as a hazardous waste
22 but right now it's below the thresholds.

23 BOARD MEMBER ROBERTI: Take lead for example,
24 what's the threshold there before it becomes toxic?

25 MR. WHITE: There's several thresholds, but for

1 example, 1,000 milligrams per kilogram total lead, or
2 more than five milligrams per liter under the California
3 Wet Leaching Test would be above those thresholds to be
4 considered hazardous.

5 You may have someone who's, for example, below
6 the five milligram per liter threshold but may be at 999
7 parts per million, and they're saying, well we want to,
8 even though it's technically solid waste, it's not
9 hazardous waste, we prefer to see it regulated and
10 managed in a full-blown double-lined, double leachate
11 collection, hazardous waste facility.

12 BOARD MEMBER ROBERTI: What about things that,
13 under some definitions, are non-putrescible but really
14 are at some point putrescible, like palm fronds?

15 MR. WHITE: We just simply don't take that kind
16 of material in our facility. I can't speak to --

17 BOARD MEMBER ROBERTI: No, no, I'm talking about
18 in general, then maybe staff can help in general.

19 MS. NAUMAN: I think, Senator, the key issue
20 here, and one that Chuck is addressing, is whether or not
21 there's overlap or duplication here.

22 The staff is confident that in terms of
23 inspection, recordkeeping, and actual even closure
24 standards, that DTSC's requirements are comparable or in
25 some instances exceed our requirements.

1 The only issue that we're raising here is
2 whether, when you get through that whole process and DTSC
3 is in the process of establishing, utilizing their
4 standards to close one of these facilities, if the
5 financial assurance mechanism isn't producing --

6 BOARD MEMBER ROBERTI: Yeah, I, yeah, yeah, I
7 totally understand that. But we're talking about
8 closure, because as I understand it, that is what these
9 monies --

10 MS. NAUMAN: They apply to closure.

11 BOARD MEMBER ROBERTI: -- are used to pay for.

12 MS. NAUMAN: And DTSC standards for closure are
13 actually more stringent than the Waste Board standards.

14 BOARD MEMBER ROBERTI: Except when it comes to
15 captive insurance, am I right?

16 MS. NAUMAN: Right, because that's the financial
17 assurance that supports the activities of closure.

18 BOARD MEMBER ROBERTI: And what I'm, what I am
19 possibly fearful of is that in the process of closure, if
20 a liability strikes, for a reason that deals with
21 something that was more peculiar to this age than to
22 Toxics, even though it's technically under Toxic's
23 jurisdiction.

24 MS. NAUMAN: Well no, it's actually under your
25 jurisdiction as well, and that is our concern as well.

1 Once the waste Board puts a permit on a facility, your
2 permit is out there and, you know, you have a
3 responsibility and potentially liabilities.

4 BOARD MEMBER ROBERTI: Yeah, you know, that's
5 what sort of concerns me. I think, I think, I, I -- my
6 own feeling is that captive insurance, especially with
7 companies who are subject to the current stock market
8 gyrations -- and people could go through all kinds of
9 arguments whether that affects their liquidity, blah,
10 blah, blah, I think it does -- is just too weak a
11 financial standard.

12 I'm also concerned that we still may have a
13 qualitative problem. And I could be a hundred percent
14 wrong on this, but my recollection and all the testimony
15 I've heard is that this middle ground kind of waste does
16 include non-putrescible, non-putrescibles. And the one
17 that always comes to my mind is palm fronds, but I'm sure
18 there are many others. It's part of construction, it's
19 part of construction and demolition. It doesn't
20 decompose readily, but it is a biological item.

21 MR. WHITE: I can't speak for --

22 BOARD MEMBER ROBERTI: I don't know how serious
23 it is, but it is something that is peculiar to what we
24 do.

25 MR. WHITE: I can't speak to other facilities,

1 Senator.

2 SENATOR ROBERTI: And I understand you're much
3 stricter.

4 MR. WHITE: We just simply will not take those
5 kind of putrescible waste. We're precluded from the
6 department by taking anything that could decompose and
7 generate gas. So it just simply is not a part of the mix
8 at our facility, it might be at others, but it certainly
9 is not at our facility, and we certainly would have no
10 plans to accept that material.

11 And I certainly respect, Senator, you had your
12 opinion on, your position on captive insurance. I wasn't
13 really planning on coming and debating that. We would
14 love to have a continuing dialogue with this Board, and
15 you specifically, Senator, on the merits or lack thereof
16 of captive insurance. And I'd be happen to get into it
17 if you'd want to today, I'd just as soon not, quite
18 frankly.

19 And really the issue is that you have another
20 sister state agency that has established financial
21 assurance regulations, that agency may make a decision on
22 the appropriateness of captive insurance at some future
23 date.

24 BOARD MEMBER ROBERTI: Independent of captive
25 insurance I'm not that concerned, but unfortunately that

1 lingers.

2 MR. WHITE: I understand.

3 BOARD MEMBER ROBERTI: Because there are
4 different regulations, different requirements rather than
5 the two agencies impose.

6 MR. WHITE: We would just ask that you try to --
7 well in summary, my concern is that we don't have
8 duplication, overlapping requirements with respect to
9 these kinds of mechanisms. And we would ask that you go
10 forward with these regulations for public notice, but
11 that as you go forward delete the reference to having to
12 require this duplicative, overlapping compliance with
13 both DTSC and your financial assurance regulations, and
14 rely on the financial assurance regulations that have
15 already been established by the Department of Toxics for
16 this particular facility.

17 That's our request, and we certainly urge you to
18 do that. Also with me today I've got Mr. Jess Juarez.
19 Jess is a supervisor at the Kettleman Hills facility.

20 All too frequently you hear from people like
21 myself who hardly ever leave Sacramento, or Glendale as
22 the case may be, but I thought it would be helpful to
23 hear from one of the actual operators of the facility and
24 his perspective on this as well.

25 So Jess, if you want to come forward?

1 BOARD CHAIR MOULTON-PATTERSON: Great. Thank
2 you.

3 MR. JUAREZ: My name is Jess Juarez, I'm a
4 supervisor at the Kettleman Hills facility. I've been
5 working there for the better part of eighteen years. On
6 behalf of the Kettleman employees I'd like to thank you
7 for --

8 BOARD CHAIR MOULTON-PATTERSON: Mr. Juarez,
9 might I ask you to speak just a little closer to the
10 mike? It's not your fault, but it's difficult to hear.

11 MR. JUAREZ: Sure. How's this?

12 BOARD CHAIR MOULTON-PATTERSON: That's great,
13 thank you.

14 MR. JUAREZ: On behalf of the Kettleman
15 employees I appreciate the opportunity to address the
16 Board.

17 We at Kettleman are proud of the facility we
18 run. We have an excellent record of both health and
19 safety and environmental compliance. We believe our
20 record shows that we are the absolute best at what we do,
21 and that is safety manage waste from thousands of
22 California businesses and public agencies.

23 But we're also very aware that each day we must
24 compete with out of state facilities, facilities that are
25 far less stringently regulated than those found in

1 California.

2 Many people don't realize that California's
3 disposal fees are among the highest in the Western United
4 States. And that California is the only state that
5 allows counties to impose a ten percent tax on gross
6 revenues of hazardous waste facilities.

7 And that most of the waste we handle are not
8 considered hazardous once they leave the state, thus they
9 can be disposed of more cheaply as solid waste out of
10 state.

11 We ask the Board to take great care as you bring
12 us under your regulatory control. Before you consider
13 any requirements that may conflict with or duplicate the
14 current requirements of the DTSC, we ask that each of you
15 come and visit our facility so that you may observe how
16 we operate and how we are regulated by DTSC.

17 Thank you.

18 BOARD CHAIR MOULTON-PATTERSON: Thank you for
19 coming.

20 BOARD CHAIR MOULTON-PATTERSON: Questions,
21 comments, Board members?

22 Mr. Jones did you have something?

23 BOARD MEMBER JONES: I think these have to go
24 out for 45 days. I do think, though, that this facility,
25 or that section of the facility, the class two site

1 that's on the Kettleman property will be closed to Title
2 22 or Title 27 regs, correct?

3 MR. WHITE: That's correct.

4 BOARD MEMBER JONES: The class one facility that
5 some of this material would go to will be closed to Title
6 22 regs which are the hazardous waste regs?

7 MR. WHITE: That's correct.

8 BOARD MEMBER JONES: And so what we're talking
9 about, and maybe I'm missing something here, while we are
10 attaching a registration tier to an existing permit, we
11 are, as part of our closure, are we going to have the
12 operators develop an entire closure plan for that
13 municipal fraction, or are we going to defer to the
14 waste, to the closure plan that is on file with the DTSC?

15 MS. NAUMAN: We would be deferring to DTSC.

16 BOARD MEMBER JONES: So we're deferring to DTSC,
17 DTSC is the sister agency that still accepts captive
18 insurance. If we make a determination that, in fact, we
19 don't want to allow them to use captive insurance, does
20 that mean that the entire insurance mechanism for the
21 entire Kettleman facilities changes from what is an
22 approved method by DTSC, which is captive insurance, that
23 that will be changed to the Waste Board's non-captive
24 insurance for the entire facility?

25 MS. NAUMAN: Yes.

1 BOARD MEMBER JONES: So you're asking us, where
2 we defer to DTSC under Title 22 closure regs, because
3 it's their closure plan, but you're asking us to put in
4 our mechanism as opposed to their mechanism when we're
5 not going to have anything to do with their closure. I
6 mean if anybody is on the hook if this thing goes south,
7 it's the operator, and it's DTSC; it's not the Waste
8 Board.

9 MS. NAUMAN: Well Mr. Jones, I look at it as the
10 Waste Board and as the state. And we have deferred to
11 DTSC in this regulation package wherever we felt that
12 their requirements and standards were comparable or
13 exceeding our current standards. And we can't make that
14 same determination when it comes to the financial
15 assurance mechanism. And if we were able to make that
16 determination we wouldn't be having this conversation.

17 But with respect to closure standards, with
18 respect to inspections, recordkeeping, etcetera, we have
19 felt comfortable deferring to DTSC, because we started
20 this package with the assumption that we would not be
21 duplicating or overlapping with them, and that we would
22 defer to them to the maximum extent possible.

23 But we're not able to be consistent in doing
24 that when it comes to the financial assurance mechanism,
25 so it becomes a policy issue for the Board.

1 BOARD MEMBER JONES: Without the benefit of
2 DTSC. Without the benefit of DTSC. You're asking this
3 Board basically at this facility to do one of two things:
4 Either not allow hazardous waste facilities to take in
5 any diminimus amount of municipal solid waste and keep
6 the standards as they are, or you're asking this Board to
7 leap ahead of DTSC.

8 MS. NAUMAN: Well Mr. Jones, we have had
9 extensive conversations, discussions with DTSC about this
10 issue, and we have, you know, shared with them our staff
11 views and your Board's views about the advisability of
12 using captive insurance. To date they have not changed
13 their position. And we've continued to dialogue with
14 them.

15 So it's not without, you know, an effort to work
16 with them.

17 BOARD MEMBER JONES: Convince. They, I had no
18 problem with our vote on captive insurance for municipal
19 solid waste facilities. That does not bother me at all.
20 But it does bother me that this Board is going to take
21 another agency's standards and change them for some level
22 of material that is considered diminimus.

23 So, I mean I don't think that, I don't know how
24 other Board members feel, but I think it's really a
25 unique situation when one Board that doesn't have

1 oversight or has a limited role puts their standards in
2 place on something that is this big without getting
3 sign-off from that agency.

4 So I couldn't support that part of it, of the
5 package.

6 BOARD MEMBER ROBERTI: Madam Chair.

7 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

8 BOARD MEMBER ROBERTI: I agree with Mr. Jones.

9 I do know, however, that we're just setting the 45 day
10 period, am I right?

11 MS. NAUMAN: That's correct.

12 BOARD MEMBER ROBERTI: I don't think I have a
13 problem with the 45 day public review beginning, with the
14 full understanding that if Toxics still has a captive
15 insurance program when we take the final vote I, I just
16 simply can't vote for it because I think it's too lenient
17 a standard in case we have a major closure problem on
18 financial assurance.

19 So I don't mind getting the 45 day started in
20 the hopes that maybe something on captive insurance can
21 be worked out in the interim. But just to let the world
22 know that for my one vote I absolutely would not abandon
23 our standard which is much more rigorous on financial
24 assurance when the final vote would come.

25 BOARD MEMBER EATON: Madam Chair.

1 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton and
2 then I'd like to say something.

3 BOARD MEMBER EATON: I wasn't going to speak but
4 I think it does need to have its 45 days, but I would ask
5 my fellow Board members and perhaps staff to talk to
6 fellow Board members and their staff a little bit about
7 the history and, of this, and how it came to be that
8 these regulations are before us.

9 Mr. White is absolutely correct, his facility
10 has always stood alone when it came to this issue.

11 This issue arose out of Imperial County. They
12 are conspicuous by their absence today. Mr. White, if
13 I'm not mistaken, had a full solid waste facilities
14 permit for this facility. The other three facilities did
15 not.

16 And an issue arose with the local LEA over
17 different kinds of waste, not the waste that Mr. White
18 talked about, but other kinds of waste, other country's
19 waste, all kinds of waste that arose.

20 It came up on an ninety procedural aspect AB 59
21 procedural aspect. This is a compromise, this was a
22 compromise over fees, this was a compromise over a number
23 of issues. That history is lost here today.

24 And I appreciate the fact that, you know,
25 Kettleman, which has stood alone from day one on this

1 issue and has some legitimate issues, but the other
2 several facilities and the LEA who brought it to our
3 attention, this is a long history. And I would ask that
4 you go back through and look at the history as you look
5 through, and you will see why we reopened this issue and
6 why captive insurance continues to plague us and needs to
7 be in place or not in place as it relates to this.

8 Otherwise, we should go back and we can reopen
9 the issue on the AB 59 appeal and get the fees that are
10 owed to us. And this was a compromise. We were supposed
11 to get fees, were we not, staff? Wasn't that the issue?
12 Yes, it was, it was a full solid waste permit. If we
13 were going to issue we would get fees on the issues, for
14 the waste that was going into that cell.

15 MR. WHITE: We are paying the fees.

16 BOARD MEMBER EATON: Right, and I understand
17 that. I'm not, I'm talking about the Imperial County
18 issue that arose. And that's what I want to have
19 explained here.

20 If you find the road of how we got here, then
21 you can determine which path you want to take. But if
22 you ignore the road that got you here, then that can take
23 you over the cliff.

24 BOARD CHAIR MOULTON-PATTERSON: Ms. Nauman,
25 would you explain? I don't know the history that Mr.

1 Eaton is talking about and so I don't understand.

2 MS. NAUMAN: Well we are guided by the statute,
3 which the LEA was referring to when we brought this item
4 forward. And Mr. Eaton is correct, and it's difficult to
5 recount all the steps in the history of it, and others
6 may be able to help me.

7 But as I recall, Mr. Eaton, the LEA in Imperial
8 County cited the facility for operating outside of the
9 statutory requirement to have both a solid waste facility
10 permit from the Waste Board as well as a permit from DTSC
11 in order to accept both hazardous waste and the
12 non-putrescible, non-hazardous waste that they were
13 accepting.

14 And then there was a discussion about
15 appealing -- I think I'm recalling now. They issued a
16 violation, and then the operator, Safety Clean, filed an
17 AB 59 appeal. Then there was an agreement to stay the
18 appeal action pending discussion and some action by this
19 Board, which turned out to be the compromise, figure out
20 a regulatory scheme whereby the facility could comply
21 with statutory requirement to have two permits.

22 The issue of fees, you know, is relevant in that
23 once a registration permit or any other solid waste
24 facility permit would issue to the facility, then the
25 fees would be collected on that facility for that waste

1 coming in under our permit.

2 So that's how we entered into this regulatory
3 package development process. And the appeal from Safety
4 Clean has been in a stayed mode pending the adoption of
5 these regulations. Does that answer your question? Is
6 that sufficient?

7 BOARD MEMBER EATON: I didn't have a question.

8 MS. NAUMAN: Have I recounted the history
9 as you remember? Have I missed anything? That's to the
10 best of my recollection.

11 BOARD MEMBER EATON: Oh, sure. That's why I
12 asked if you would just do that research prior to
13 bringing 'em back in 45 days, because you will see
14 numerous briefs by some of the top law firms in the state
15 that challenged us, and that as a result of that, not Mr.
16 White's facility, but other facilities that were taking
17 in all kinds of waste, all kinds of waste, and I believe
18 even some MSW into that cell, and they have records of
19 it, and that this was the agreement that comes.

20 Now if we're going to change that agreement,
21 then we ought to look at the AB 59 appeal and let's
22 reopen it.

23 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

24 BOARD MEMBER JONES: Madam Chair, just a quick
25 follow-up, I know you want to speak to this issue. But

1 just for a little more, or a little additional clarity.

2 The LEA referred, relied on a piece of the
3 statute, and I forget the number, that says that these
4 facilities that take both have to have both permits.

5 What the operator had relied on was an MOU, all
6 three operators, or all two operators, I guess, for three
7 facilities, an MOU that was issued by the Department of
8 Health Services, between the Department of Health
9 Services, which now that division is called DTSC but
10 originally it was under Health Services, and Natural
11 Resources, the Waste Board, which was the old Waste
12 Board.

13 And that was a 20, 21, 22-year-old MOU that
14 agreed that those facilities were allowed, through this
15 MOU, to accept these materials.

16 Mr. Eaton is absolutely right. I mean when we
17 had the briefing I brought up this issue of the MOU
18 because it was, it was, I think the LEA from Imperial did
19 the right thing by citing that, and what was the question
20 was this existing MOU, is it valid, is it not valid?

21 If that had gone to the next step, the next step
22 was an AB 59 hearing in front of this Board to make a
23 determination whether or not the operators that had
24 relied on this, and I don't want to make their case, but,
25 but when you have transfer of assets you do due

1 diligence, and it would seem to me something like that
2 had to pass some kind of scrutiny. But that would be
3 where we're coming from on this Board, and we could make
4 a determination.

5 And I remember the day that we talked about
6 adding this, this registration tier to their existing
7 permit. There was a discussion about who we would defer
8 to and who we wouldn't defer to. But I thought it was
9 unusual when we talked, when the issue of captive
10 insurance came up, the operators that operate the other
11 facilities said, oh, this isn't an issue for us, I mean
12 we'll just pay whatever kind of closure, post closure you
13 want, because they didn't have captive insurance.

14 So the one facility that had nothing to do with
15 this debacle also is the facility that now is in the
16 middle of it, and has an existing relationship with DTSC
17 where their closure, post closure mechanism is accepted.

18 So I think it's very relevant that we get a
19 layout of the land. Because the alternative is, don't do
20 these and come forward with the AB 59 appeal.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
22 Jones.

23 Ms. Nauman, would it be possible to move forward
24 the regs without the captive insurance part? Where I'm
25 coming from, I still have questions on that, you know. I

1 don't know if it's a good thing or a bad thing. But I do
2 agree with Mr. Jones about going around, I mean I don't
3 want to go around Toxics if they're going to be making a
4 determination in the next few weeks, is that --

5 BOARD MEMBER JONES: That's what they said.

6 BOARD CHAIR MOULTON-PATTERSON: So is that a
7 possibility, Ms. Bruce?

8 INTERIM EXECUTIVE DIRECTOR BRUCE: We understand
9 from Toxics that that is something they're looking at in
10 the next couple of weeks, so we would accept, if you went
11 out for your 45 days you would know by the end of 45 days
12 what Toxics is going to do about captive insurance.

13 BOARD CHAIR MOULTON-PATTERSON: But does it send
14 a signal? I mean --

15 MS. NAUMAN: Here's another practical
16 consideration. If you take it out of the package, and
17 the package is silent, there's a probability or a
18 possibility that we would receive no comments on that
19 issue. And so we would not have any basis to then
20 include it back in the package.

21 MR. WHITE: I promise I will comment on the
22 issue.

23 MS. NAUMAN: Okay. That takes away that
24 probability or possibility.

25 (LAUGHTER.)

1 MS. NAUMAN: So you can either leave it in and
2 let the discussion ensue, or you can remain silent.

3 BOARD MEMBER JONES: Madam Chair.

4 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

5 BOARD MEMBER JONES: I think we need to, in fact
6 I'd be prepared to make a motion that we put these things
7 forward for 45 days, leave that issue in as it exists
8 today, understanding that it's still an issue that this
9 Board hasn't decided on, I don't think, unless somebody
10 wants to make a motion to force a vote.

11 But we do need, and I think like Mr. Eaton said
12 and as the Chairman said, get the information from DTSC,
13 give us the full package of how this thing weighs out,
14 and put it forward for the 45 day comment period.

15 BOARD CHAIR MOULTON-PATTERSON: Do we need a
16 motion?

17 BOARD MEMBER EATON: If legal counsel could pass
18 around the briefs that were prepared by our legal office
19 with regard to the memorandum of understanding, and our
20 position as to why it wasn't valid for the Board members,
21 I think it would be helpful.

22 CHIEF LEGAL COUNSEL TOBIAS: Certainly.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
24 Eaton.

25 So you --

1 BOARD MEMBER JONES: So I'll make a motion for
2 the 45 day comment period.

3 BOARD MEMBER MEDINA: Second.

4 BOARD CHAIR MOULTON-PATTERSON: We have a motion
5 by Mr. Jones, seconded by Mr. Medina.

6 Please call the roll.

7 BOARD SECRETARY VILLA: Eaton.

8 BOARD MEMBER EATON: Aye.

9 BOARD SECRETARY VILLA: Jones.

10 BOARD MEMBER JONES: Aye.

11 BOARD SECRETARY VILLA: Medina.

12 BOARD MEMBER MEDINA: Aye.

13 BOARD SECRETARY VILLA: Paparian.

14 BOARD MEMBER PAPARIAN: Aye.

15 BOARD SECRETARY VILLA: Roberti.

16 BOARD MEMBER ROBERTI: Aye.

17 BOARD SECRETARY VILLA: Moulton-Patterson.

18 BOARD CHAIR MOULTON-PATTERSON: Aye. We'll
19 take a ten minute break.

20 (Thereupon there was a brief recess.)

21 BOARD CHAIR MOULTON-PATTERSON: I'd like to
22 remind the Board that we're going to be having a very
23 brief closed session right before lunch at noon or
24 thereabouts.

25 And also I wanted to announce the Board had

1 requested that we have a special meeting on tires to
2 energy, and we thought that the best time for that would
3 be April 18th after our agenda review.

4 If any Board members have a problem, please let
5 me know and we'll try and work that out. But that way
6 we, since we're going to be there, or most of us will be
7 there for the agenda review or the briefing, then it made
8 sense to have it after that. So you can let me know if
9 there's a problem.

10 Is there a problem, Mr. Paparian?

11 BOARD MEMBER PAPARIAN: We can discuss it
12 separately, but I'll be back in Washington, D.C. that
13 week.

14 BOARD CHAIR MOULTON-PATTERSON: Okay. Okay. If
15 there's a problem see Ms. Bruce and we'll try and work it
16 out and have it at a better time.

17 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton, any
18 ex-parte?

19 BOARD MEMBER EATON: None.

20 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

21 BOARD MEMBER JONES: Matt Cotton and our friends
22 from Imperial County, the LEA's.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.
24 Medina.

25 BOARD MEMBER MEDINA: None.

1 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

2 BOARD MEMBER PAPARIAN: None.

3 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

4 BOARD MEMBER ROBERTI: No ex-parte.

5 BOARD CHAIR MOULTON-PATTERSON: And I have none.

6 At this time we're going to go back, I had a
7 request to go back to item seventeen, and so if you
8 wouldn't mind, Ms. Nauman, we'll go back to that item and
9 then proceed.

10 MS. NAUMAN: Certainly. Item 17 is
11 consideration of approval of the scope of work for a
12 survey report of mine reclamation sites. This was a
13 contract concept number five from the 2000/2001 fiscal
14 year.

15 This results from the Board's consideration of
16 the draft set of regulations on construction demolition
17 and inert debris activity. At that time there was some
18 concern raised about C and D and inert debris material,
19 particularly in mine reclamation sites, and as a result
20 of that the contract concept was approved.

21 What you have before you today is the scope of
22 work that the staff is proposing to conduct to address
23 the questions that the, were raised, and identified gaps
24 in research that will then feed back into the development
25 of the second phase of the C and D regulations which was

1 reflected in the rulemaking calendar that you approved
2 earlier this year.

3 I might indicate that we will be pursuing an
4 interagency agreement process as well as possibly sending
5 this out to bid. So if we do pursue the interagency
6 agreement process, you would not then see this coming
7 back for an award.

8 If we then put it out to bid, certainly you will
9 see it again before that award.

10 We are operating under a fairly tight time
11 constraint in an effort to try and get these funds
12 encumbered and get the contract awarded by June 30th.

13 And I believe that there are probably some
14 questions.

15 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
16 speaker slip, let's go ahead with that if I don't see any
17 -- oh, Mr. Eaton, would you like to go ahead?

18 BOARD MEMBER EATON: Go ahead.

19 BOARD CHAIR MOULTON-PATTERSON: Would you like
20 to go ahead?

21 BOARD MEMBER EATON: Go ahead.

22 BOARD CHAIR MOULTON-PATTERSON: Kenneth Hirsh.

23 MR. HIRSH: Madam Chair, members of the Board,
24 my name is Kenneth Hirsh, I'm a consultant for H.M.
25 Holloway, which is an open pit gypsum mine in the very

1 northwest corner of Kern County just northwest of the
2 intersection of Highway 46 and I-5.

3 They've been in existence for 60 years. They
4 control and operate 3,200 acres. Our pits are somewhere
5 between 40 and 55 feet deep, and we've been approved
6 under mine reclamation to take, and WDR's, to take seven
7 imported, non-organic materials for backfill with our own
8 native soil on a one to one basis.

9 Our WDR's are just above primary drinking water
10 standards, and our soils below the pits for 60 to 125
11 feet are clay and clay riched soils which have very, very
12 good densities.

13 H.M. Holloway supports this survey, the idea of
14 the survey. We feel that there are good and bad
15 reclamation projects, as there are good and bad landfill
16 projects.

17 But please keep in mind in doing the study and
18 in talking about mine reclamation, many deposits exist in
19 the surface naturally because of a unique geologic
20 setting. If this setting could be used on a large scale
21 to the benefit of the people of California, under the
22 regulation and supervision of good health and safety
23 parameters, then it should be utilized. I think a good
24 example is the approval you just had recently of Eagle
25 Mountain.

1 There have been a lot of mines that have
2 attempted, or a lot of people have attempted recently to
3 go through the Mines and Geology Board, attempting to
4 take old abandoned mine pits, surface pits, and reopen
5 them under the guise that they're commercial so that they
6 can qualify for SMARA and reclamation.

7 What they'll do is do a short period of mining,
8 as they call it, and then they'll go right into a
9 reclamation phase, trying to bypass the solid waste
10 facilities permit and get exemption to import materials
11 and backfill.

12 The Mines and Geology Board has been turning
13 down these fraud attempts to reopen these pits and use
14 them for a reclamation exemption. So we endorse the
15 proposal here. We just hope that it would not be used as
16 a vehicle for any preconceived ideas, that it be an open
17 survey, open-minded survey that would be beneficial to
18 all.

19 Thank you.

20 BOARD CHAIR MOULTON-PATTERSON: Thank you for
21 being here.

22 Mr. Eaton.

23 BOARD MEMBER EATON: Yeah. Ms. Nauman, because
24 I couldn't find it in the material, and perhaps you
25 mentioned it, are you planning on going out to bid, or

1 did you say you were going to go interagency on this?

2 And if so, who would be, or are you going CMAS.

3 MS. NAUMAN: Mr. Eaton, our original intent was
4 to go out to bid, however we are exploring options with
5 pursuing an interagency agreement. We have had some
6 preliminary discussions with UC Davis and they have
7 indicated some interest in perhaps conducting the study
8 for us. So we may go interagency agreement.

9 BOARD MEMBER EATON: If you were to go with a
10 bid, how long would that be? I'm trying to get a
11 timeline here and I'm going to be leading up to some
12 other questions so it's important I have the basis by
13 which --

14 MS. NAUMAN: Sure.

15 MR. DE BIE: Mark De Bie with the Permitting and
16 Enforcement Division.

17 My understanding in talking with staff that has
18 been in contact with the contracts group is that if we
19 did the RFP process that because of the timeframes
20 involved we wouldn't be in a position to come back to the
21 Board for approval of the contractor until May, maybe
22 even June.

23 With an interagency agreement that timeframe be
24 shortened.

25 BOARD MEMBER EATON: And what would be the

1 overhead if we went to UCD? Because the University of
2 California has a tremendous amount of overhead, and if we
3 have limited funds --

4 MR. DE BIE: Certainly that would be a concern
5 that staff has about, you know, since this a small amount
6 to begin with, that a lot of it not be absorbed through
7 overhead.

8 We're just starting those discussions with UCD,
9 so we don't have a lot of details on what they're going
10 to bring to the table in terms of what they'll be asking.

11 The group that we, that showed some interest in
12 this project is one that, you know, hasn't done a lot of
13 interagency work with other agencies, it's a remote
14 sensing group. They have worked in partnership with the
15 Department of Conservation on various projects.

16 BOARD MEMBER EATON: What is their background?

17 MR. DE BIE: Our understanding, and again staff
18 is starting to explore this so I don't have a lot of
19 details, but our understanding is that the services they
20 have provided for DOC in the past has been extensive
21 mapping of facilities, which included on-site surveys to
22 verify data that comes out of the files or databases.

23 They have the technology and the expertise to
24 evaluate impacts associated with mines and reclamation
25 activities.

1 So, you know, they have bits and pieces that
2 we're aware of currently that would meet, that would be
3 required to implement this scope of work, and staff
4 intend to have detailed discussions with them to see if
5 they can fulfill all aspects of it.

6 We have at this point shared the scope of work
7 with them, and verbal communications back from them, they
8 indicate that they see that they could implement all of
9 the tasks outlined.

10 BOARD MEMBER EATON: My understanding just in
11 making a few inquiries through a few phones calls, and
12 also just looking at literature on the Internet from
13 sister agencies, is that there's some 1,470 mines that
14 have reclamation projects.

15 And out of those, it has been very traditional
16 to put boilerplate language in here for the kinds of
17 operations that we're going to be serving. Is it our
18 intent to do a portion of those, or is it our intent to
19 do all of those? Which potentially, because of the
20 policy implications of how we deal with this, could have
21 repercussions if we decide to, you know, allow these
22 kinds of facilities to go on. It impacts our diversion
23 aspects, or anyone could open one of those up.

24 And it was really sort of ironic, when we were
25 up visiting the monofill and touring that, that the

1 individuals happened to mention, oh yeah, we just put in
2 here being a landfill some day. It was sort of the soup
3 du jour of the day to put this boilerplate.

4 So what are we looking at in terms of survey
5 numbers?

6 MR. DE BIE: Staff has already begun to look at
7 the data from the Department of Conservation that, you
8 know, is the clearinghouse for reclamation information.

9 And one of the filters that we've gone through
10 already is of the thousands of mines, which ones did have
11 some indication that they would potentially be a landfill
12 or importing material as part of their reclamation
13 activity. So that's one filter that brings the numbers
14 down.

15 And then there's another set of filters that
16 we've been looking at to narrow down the scope of, at
17 least the numbers of facilities. And those include
18 whether it's an open or a surface mine, or whether it's,
19 you know, the old chaff mine, that kind of operation, one
20 lends itself to C and D disposals, others don't.

21 Also things like proximity to urban areas.
22 There's some expectation that it would be most likely to
23 have a very remote, small mine used for a lot of C and D
24 disposal as opposed to one near an urban, a larger one
25 near an urban center where the economics would work

1 better to utilize those.

2 So there, there will be some narrowing of the
3 numbers.

4 BOARD MEMBER EATON: Okay. I'd like you to turn
5 your attention to page two of two of the scope of work
6 under task three. Under A, B, C, and D there's a
7 sentence that reads as follows: "Upon completion of
8 tasks one, two, and three, the contractor and the Board's
9 contracting manager shall meet to discuss the
10 recommendations."

11 And then it says, "Board staff will determine
12 whether or not to complete tasks four through six." And
13 four through six involve mapping which is a, kind of a
14 minor one. But it's interesting to me that we don't get
15 a report, nor do we get a final report.

16 Now my understanding is that this project
17 eventually is, how it arose was out of a piece of
18 legislation, and that eventually regulations are going to
19 come out of this. So why wouldn't we want to have a
20 report? Why would that be up to staff to determine? And
21 do you see where I'm reading? Upon completion.

22 And then here's the other kicker if you will
23 look at it. On page three of three it says, "The
24 contractor," if you are deciding to go with the remaining
25 tasks, so in other words the discretion is with the

1 contract manager.

2 So it's very well that this Board allocates
3 money and never gets to see any of the information. And
4 then even if it were to complete tasks four through six,
5 then it is really incumbent upon the Board's contract
6 manager to review and provide comments.

7 I would hope that somehow we would be able, as a
8 Board, to see the results of that contract. After all,
9 the whole issue here is whether or not, is, my
10 understanding is, can these individual projects,
11 reclamation projects, mines, accept these kinds of
12 materials? If so, the policy implications are, will we
13 charge fees on those? Will we not charge fees on those?
14 Will the cities and counties get diversion?

15 I can't understand how under this language that
16 we would ever get that information filtered up to us.

17 MR. DE BIE: If I'm looking at the language you
18 refer to, I think the intent of that is that upon the
19 completion of tasks one, two, and three, that the
20 contract manager would sit down with the contractor,
21 review what they've gathered so far, and either instruct
22 them to continue on with four, five, and six, or go back
23 and gather additional information.

24 So it's a feedback check-in midway, midstream
25 through the process to say yes, you have adequate data

1 here, information, now you can continue on with your
2 draft report and your final report.

3 Or no, there's some gaps here, you know, go back
4 and do it again, and then come back and continue on.

5 BOARD MEMBER EATON: So --

6 MR. DE BIE: So there will ultimately be a final
7 report that includes comprehensive recommendations as
8 outlined in task six.

9 BOARD MEMBER EATON: And so we are looking at
10 then eighteen weeks. So we are going to, the contract
11 will include all six tasks?

12 MR. DE BIE: Yes.

13 BOARD MEMBER EATON: Okay. And then eighteen
14 weeks, which is some roughly four months, two days. So
15 what we're looking at is probably getting this back
16 sometime in the fall? Because in order to complete, just
17 if you were to go the route, and so what we will do is
18 miss the opportunity under Assemblyman Chavez's
19 legislation to have any impact, because we will not be
20 able to be in the position to be able to formulate
21 regulations; and therefore, the fees which we did not
22 collect under the original proposal will then have to be
23 foregone, at least temporarily, or for some period of
24 time thereafter.

25 MS. NAUMAN: It depends on the outcome of that

1 legislation that you referred to. Because the existing
2 exemption, as you note, expires on January 1 of 2002. I
3 do not expect that we'll have regulations in place by
4 then. So if the pending legislation, AB 173, is not
5 enacted, then the reprieve or the exemption expires on
6 January 1.

7 BOARD MEMBER EATON: What is staff's feelings
8 with regard to that legislation? Are you going to bring
9 it forward for a Board position?

10 MS. NAUMAN: That's a question I -- I'll defer
11 to Ms. Bruce on that.

12 INTERIM EXECUTIVE DIRECTOR BRUCE: At the
13 present time there was not a, an understanding that that
14 would come forward.

15 BOARD CHAIR MOULTON-PATTERSON: We can't hear.

16 BOARD MEMBER EATON: Come on up front, Chuck.

17 INTERIM EXECUTIVE DIRECTOR BRUCE: At the
18 present time that was not in the plan to bring that
19 forward.

20 BOARD MEMBER EATON: Right. So nothing forward,
21 correct?

22 INTERIM EXECUTIVE DIRECTOR BRUCE: No, that's
23 correct.

24 BOARD MEMBER EATON: So it's very possible that
25 that legislation could be enacted, and I don't take any

1 position right now on that piece of legislation, I think
2 it was up to us as an organization to get our act
3 together, not necessarily the operators, and now we are
4 behind.

5 So the question is when will we have it, and
6 when can we do that? Because I think that's only fair to
7 us Board members. I also think it's fair to the
8 operators so that they know what to expect over the next
9 year and a half.

10 And if you remember, I did oppose this
11 legislation, and I thought we would have it together.
12 And I'm not being critical of anyone, I'm just saying I
13 find it very hard to believe when there's this kind of
14 impact at state especially -- it's not just the money.
15 If it were just the money, I think the problem could have
16 been solved a long time ago.

17 It's really the impact as our diversion rates,
18 what we're going to be able to do, how we'd reuse this
19 material. As the previous speaker talked about, the
20 fraud that takes place under some of these projects.

21 So I'm just looking for a timeline that we can
22 depend on, because I'm being asked for where I need to be
23 on this legislation, by both the principal people behind
24 the legislation as well as those in the cities and
25 counties. And will this provide us the information.

1 And that's why, Mr. De Bie, I was interested in
2 seeing if we're going to get a final report, because
3 there's nothing in here that says the Board will receive
4 that final report, it's all with the contract manager.

5 MS. NAUMAN: Mr. Eaton, I --

6 BOARD MEMBER EATON: So therefore, I think that
7 needs to be a commented on by, also by the people such as
8 Mr. White and others so they can take a look at the
9 survey as well.

10 MS. NAUMAN: Mr. Eaton, I apologize if it was
11 not fully specified in the scope of work, but it was
12 fully our intent all along that that report would come
13 forward to the Board for discussion, because we will be
14 looking for your direction.

15 And so we, depending on the results of the
16 survey report and your direction, to prepare that portion
17 of the C and D regulations that will address this.

18 So we will bring it forward to you as soon as
19 it's completed and immediately get to work on finishing
20 up that portion of the C and D regulation package.

21 BOARD MEMBER EATON: Perhaps Ms. Fish can tell
22 me, administration-wise, how much money did we not
23 receive as a result of the previous legislation? And
24 what is our future projections for loss of revenue due to
25 the fact that this will probably, in all likelihood, I

1 would think, pass the bill? I really can't see it not
2 passing.

3 CHIEF DEPUTY DIRECTOR FISH: Our revenue office
4 had projected from --

5 BOARD CHAIR MOULTON-PATTERSON: I think that
6 mike isn't working. I can't hear either you or Ms.
7 Bruce.

8 CHIEF DEPUTY DIRECTOR FISH: Sorry.

9 BOARD CHAIR MOULTON-PATTERSON: Thank you.

10 CHIEF DEPUTY DIRECTOR FISH: Our revenue office
11 at the time had projected that the annual loss was right
12 around 500,000.

13 BOARD MEMBER EATON: Per facility?

14 CHIEF DEPUTY DIRECTOR FISH: No, that was
15 collective for the three facilities.

16 We had projected an additional 500,000 to come
17 in, and we had projected retroactively, if they had gone
18 back, that it was almost \$10 million. But we have
19 removed those projections from our revenue.

20 BOARD MEMBER EATON: Thank you.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you for
22 bringing that up Mr. Eaton.

23 Is Mr. Miller here for legislation?

24 INTERIM EXECUTIVE DIRECTOR BRUCE: No, I believe
25 his staff though is here.

1 BOARD CHAIR MOULTON-PATTERSON: Thank you.

2 BOARD MEMBER PAPARIAN: Madam Chair.

3 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

4 BOARD MEMBER PAPARIAN: I'm sorry, is Mr.

5 Eaton -- are you done?

6 BOARD MEMBER EATON: Yes.

7 BOARD MEMBER PAPARIAN: We talked in the
8 briefing about the issue of getting a better handle of
9 what type of wastes are going into these facilities. And
10 I just want to make sure that you're going to follow up
11 and clarify that in here.

12 As I'm reading the existing language, it doesn't
13 get at what I would like to get at.

14 MS. NAUMAN: We'll get it on the record right
15 now.

16 MR. DE BIE: For the record, the scope does talk
17 about describing and identifying the waste stream. And
18 what staff will do prior to release of the scope of work
19 is include details saying there should be some, we'll
20 break out the issue that you brought forward relative to
21 potential toxic or hazardous materials that might be in
22 that waste stream, and we may even include examples like
23 the contractor should, you know, be more sensitive or be
24 able to break out if there was any lead paint
25 contaminated materials or other kinds of contaminants in

1 that waste stream.

2 So it's staff's intent to add detail to the
3 scope of work that addresses that issue.

4 BOARD MEMBER PAPARIAN: Thank you.

5 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
6 you. Mr. Medina.

7 BOARD MEMBER MEDINA: Yes, I would like to see a
8 survey that is sensitive to environmental justice
9 concerns. For example, how many of the sites are located
10 on or in close proximity to tribal lands along the
11 California Mexican border, near low income communities?
12 I'd like to see that included in the survey.

13 BOARD CHAIR MOULTON-PATTERSON: Okay. Any other
14 remarks?

15 Mr. Paparian.

16 BOARD MEMBER PAPARIAN: Yeah, I'm sorry, just
17 one additional one. As I'm looking through here I'm not
18 sure it's clear that we're getting good information about
19 how much of what types of wastes are going into these
20 types of facilities.

21 MR. DE BIE: On task one, number 1(D)(d) it
22 breaks out the amount of material used in tons. So we
23 will be trying to record total amount, are you asking to
24 break it out in terms of types of waste or categories of
25 waste or something?

1 BOARD MEMBER PAPARIAN: Categories of waste, I
2 think, yeah.

3 MR. DE BIE: Okay. Yeah, over and above the C
4 and D and inert? So things like amount that might be
5 wood or concrete or asphalt, those sorts of things?

6 BOARD MEMBER PAPARIAN: Right. Right.

7 MR. DE BIE: Okay.

8 BOARD MEMBER PAPARIAN: Thank you.

9 BOARD CHAIR MOULTON-PATTERSON: Anyone else? Do
10 we have, do you have enough information or do we need to
11 make a motion on this?

12 MS. NAUMAN: Yes.

13 BOARD CHAIR MOULTON-PATTERSON: Anything else
14 that anyone wanted to add? Okay, I don't see any.

15 BOARD MEMBER MEDINA: Madam Chair, I'd like to
16 move resolution 2001-76, approval of the scope of work
17 for a survey report for mine reclamations sites contract,
18 fiscal year 2000/2001, which is contract concept number
19 five.

20 BOARD MEMBER PAPARIAN: Madam Chair, I'd like to
21 second that, but just like to clarify at the same time,
22 it's with the changes that have been discussed over the
23 last few minutes?

24 BOARD MEMBER MEDINA: Yes.

25 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a

1 motion by Mr. Medina, seconded by Mr. Paparian for
2 resolution 2001-76 with the changes that were noted on
3 the record.

4 Please call the roll.

5 BOARD SECRETARY VILLA: Eaton.

6 BOARD MEMBER EATON: Aye.

7 BOARD SECRETARY VILLA: Jones.

8 BOARD MEMBER JONES: Aye.

9 BOARD SECRETARY VILLA: Medina.

10 BOARD MEMBER MEDINA: Aye.

11 BOARD SECRETARY VILLA: Paparian.

12 BOARD MEMBER PAPARIAN: Aye.

13 BOARD SECRETARY VILLA: Roberti.

14 BOARD MEMBER ROBERTI: Aye.

15 BOARD SECRETARY VILLA: Moulton-Patterson.

16 BOARD CHAIR MOULTON-PATTERSON: Aye. Number 21.

17 MS. NAUMAN: This next item is item 21. This is
18 consideration of a new standardized composting permit for
19 Sun-Land Garden Products composting facility in Monterey
20 County.

21 Mary Madison-Johnson will be making the
22 presentation.

23 MS. MADISON-JOHNSON: Yes, good morning, Madam
24 Board members and members.

25 This is an existing composting facility that's

1 been operating since 1986. The Board first concurred in
2 a standardized permit for this facility in December of
3 '97. It's located adjacent to the Marina Landfill, and
4 the feedstocks include source separated green waste from
5 adjacent marina MRF and various mushroom farms in the
6 area.

7 No complaints have been received by Board staff
8 or the LEA regarding dust, odor, or vector issues.

9 When the agenda item was prepared there were
10 some findings that were still outstanding. We have since
11 found the facility to be in conformance or consistent
12 with the California Environmental Quality Act.

13 The report of composting site information has
14 been analyzed and it is adequate and meets the
15 requirements. And there are no minimum standard issues.

16 We have representatives from the LEA, Karen
17 Sloknick and Matt Cotton representing the operator here
18 if there's any questions.

19 There were, there was a revised handout of the
20 resolution, and staff recommend that the Board adopt
21 Resolution 2001-77 concurring with the issuance of solid
22 waste facility permit 27-AA-0085.

23 Are there any questions?

24 MR. DE BIE: If I could just jump in, too, and
25 call your attention to that resolution that Mary just

1 went through. This version, even the revised version of
2 this resolution is what we refer to as the check the box
3 resolution, because at the time we, staff was still
4 reviewing the CEQA compliance issue.

5 So if the Board does move and adopt this
6 resolution, I would suggest that that motion be made in
7 such a way that the findings, all of the findings are
8 made in the affirmative that, you know, all the issues
9 have been resolved.

10 BOARD CHAIR MOULTON-PATTERSON: Okay.
11 Questions?

12 BOARD MEMBER JONES: Madam Chair.

13 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

14 BOARD MEMBER JONES: I'll move adoption of
15 Resolution 2001-77, consideration of a new standardized
16 composting permit for the Sun-Land Garden Products
17 composting facility in Monterey with all of the
18 appropriate findings.

19 BOARD MEMBER MEDINA: Second.

20 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
21 motion by Mr. Jones, seconded by Mr. Medina.

22 Please call the roll -- or substitute the
23 previous roll call without objection.

24 BOARD CHAIR MOULTON-PATTERSON: Item 22.

25 BOARD MEMBER EATON: Madam Chair.

1 BOARD CHAIR MOULTON-PATTERSON: Oh, I'm sorry,
2 you have an objection?

3 BOARD MEMBER EATON: No, I just think on a
4 permit I'd like to be registered.

5 BOARD CHAIR MOULTON-PATTERSON: Oh, okay.
6 Great.

7 BOARD MEMBER EATON: I mean on a permit, I think
8 if it were ever challenged --

9 BOARD CHAIR MOULTON-PATTERSON: You're right.
10 Ms. Villa, would you please call the roll?

11 I'm trying to save sheets here, but I'm not
12 doing it at an appropriate time.

13 BOARD MEMBER EATON: She switched sides on you
14 there.

15 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
16 you.

17 BOARD SECRETARY VILLA: Eaton.

18 BOARD MEMBER EATON: Aye.

19 BOARD SECRETARY VILLA: Jones.

20 BOARD MEMBER JONES: Aye.

21 BOARD SECRETARY VILLA: Medina.

22 BOARD MEMBER MEDINA: Aye.

23 BOARD SECRETARY VILLA: Paparian.

24 BOARD MEMBER PAPARIAN: Aye.

25 BOARD SECRETARY VILLA: Roberti.

1 BOARD MEMBER ROBERTI: Aye.

2 BOARD SECRETARY VILLA: Moulton-Patterson.

3 BOARD CHAIR MOULTON-PATTERSON: Aye. Okay. We
4 have our next one, item 22.

5 MS. NAUMAN: Item 22 is consideration of a
6 revised solid waste facility permit for Clover Flat
7 Landfill in Napa County.

8 Mary will make this presentation, and you should
9 have a revised agenda item.

10 MS. MADISON-JOHNSON: This landfill has been
11 operating in Northern Napa County and has been accepting
12 solid waste since 1963. The site is surrounded by
13 undeveloped hills designated as agricultural watershed
14 and agricultural preserve. The closest residence is
15 three quarters of a mile away.

16 The proposed project will allow for the
17 following:

18 Increase the daily maximum from 300 to six
19 hundred tons a day;

20 Change the gas monitoring probes;

21 Condition the permit to receive no more than
22 1,607 tons per month of sludge;

23 And allow that the proposed, or the operation
24 also take sludge from other sources other than Calistoga
25 Water Treatment Plant.

1 At the time the resolution or the item was
2 prepared, there were some outstanding issues.
3 Conformance with minimum standards was still outstanding,
4 and we have clarified that and there is no issue there.

5 CEQA was outstanding, and that has been resolved
6 and the permit has been revised to show the sludge that
7 it's allowed to take based on the traffic counts that
8 were addressed in CEQA.

9 There has been a revised agenda item, a revised
10 resolution, and a permit. And Greg Parry, the LEA, and
11 Shawn Edgar, the operator's representatives, are here to
12 ask, to assist with any questions.

13 All the findings having been made, and therefore
14 staff recommend Board adopt Resolution 2000-71 concurring
15 with the issuance of a solid waste facility permit
16 28-AA-0002.

17 Are there any questions?

18 MR. DE BIE: And I have to break in again and
19 call the Board's attention to that that's the revised
20 resolution, Resolution 2001-71 revised.

21 The agenda item was fully revised for this
22 particular item. And part of that is because of the LEA
23 and the operator's hard work in working with staff to
24 resolve the final CEQA issue relative to the sludge
25 tonnage. And they were able to do that and to be able to

1 fully revise the agenda item and the resolution prior to
2 the Board meeting.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
4 De Bie.

5 Mr. Paparian.

6 BOARD MEMBER PAPARIAN: One concern I have is
7 not related to the substance of the proposal itself, but
8 what I note here is that the application was sent to us,
9 I believe, on February 7th or 8th, February 7th by the
10 LEA, and presumably certified by the LEA as being a
11 complete permit package. Yet the comment period related
12 to the neg dec on CEQA ended on March 6th, two months
13 after the submittal, or one month, rather, after the
14 submittal of the permit package to us.

15 I think there's a little bit of disconnect there
16 that we may want to address in future permits and future
17 advice to LEA's to make sure that all of the
18 environmental documents and everything else have been
19 completed before the submittal of the permit package to
20 us.

21 MR. DE BIE: We can ask LEA's to follow that
22 path, but statutorily and regulatorily CEQA and the
23 permit process can be a concurrent process, so I don't
24 know if we can make them do it.

25 What happened in this particular instance was

1 that there was a CEQA process that was conducted locally,
2 but the process did not include circulation of the
3 document through the state clearinghouse, and so the LEA
4 took it upon themselves to become the lead agency and
5 circulate that document to ensure that the process was
6 completely complied with.

7 So when they submitted the permit they submitted
8 it with the assumption that, one, well not the
9 assumption, the certification that the document itself
10 was complete and correct and appropriate for this permit.
11 And they believed that the process had been fully
12 complied with. And staff alerted them to the fact that
13 the document had not gone through the state
14 clearinghouse, and they immediately worked with staff to
15 rectify that.

16 So they felt that the CEQA document had been
17 completed when they submitted the permit.

18 BOARD MEMBER PAPARIAN: Okay.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you. Any
20 other questions? Comments?

21 Mr. Jones.

22 BOARD MEMBER JONES: Madam Chair, everybody
23 that's visited the Pestoni Composting in Rutherford, this
24 is the other portion of that facility.

25 I'm going to move adoption of Resolution

1 2001-71, consideration of a revised solid waste facility
2 permit for the Clover Flat Landfill in Napa County with
3 all of the appropriate findings as revised.

4 BOARD MEMBER EATON: Second.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
6 Jones. Motion by Mr. Jones, seconded by Mr. Eaton.

7 Please call the roll.

8 BOARD SECRETARY VILLA: Eaton.

9 BOARD MEMBER EATON: Aye.

10 BOARD SECRETARY VILLA: Jones.

11 BOARD MEMBER JONES: Aye.

12 BOARD SECRETARY VILLA: Medina.

13 BOARD MEMBER MEDINA: Aye.

14 BOARD SECRETARY VILLA: Paparian.

15 BOARD MEMBER PAPARIAN: Aye.

16 BOARD SECRETARY VILLA: Roberti.

17 BOARD MEMBER ROBERTI: Aye.

18 BOARD SECRETARY VILLA: Moulton-Patterson.

19 BOARD CHAIR MOULTON-PATTERSON: Aye. Okay item
20 number 23.

21 MS. NAUMAN: Item 23 is consideration of a
22 revise solid waste facility permit for the Niland solid
23 waste site in Imperial County. And Suzanne Hambleton
24 will be making the presentation.

25 MS. HAMBLETON: Good morning. Niland is one of

1 the several county-operated landfill permits which will
2 be on the Board's agenda for permit revisions over the
3 next few months.

4 If you recall last month, the Ocotillo permit
5 was revised. There's two permits on the agenda today,
6 and we expect a permit next month and a permit in May.

7 This proposed permit will allow for the
8 following changes:

9 An increase in tonnage from five tons per day to
10 a maximum of fifty tons per day;

11 A decrease in the waste footprint from one
12 hundred acres to 13.9 acres;

13 A change in the permitted hours of operation
14 from 24 hours a day seven days a week to Thursday and
15 Saturday from 8:00 a.m. to 4:00 p.m.;

16 A change in the closure date from year 2014 to
17 the year 2008;

18 And an acceptance of a new waste type which is
19 dead fish.

20 Since this landfill was first permitted in
21 September of 1985, some of these changes have occurred.
22 Board staff have determined that all the requirements for
23 the proposed permit have been met and therefore Board
24 staff recommend the Board adopt solid waste facility
25 permit decision number 2001-73 concurring in the issuance

1 of solid waste facility permit number 13-AA-0009.

2 Both Gerald Quick and Jeff Lamour from the
3 Imperial County local enforcement agency are seated
4 behind me. And we're ready to answer any questions that
5 you may have.

6 BOARD CHAIR MOULTON-PATTERSON: Thank you very
7 much.

8 Mr. De Bie.

9 MR. DE BIE: During the briefing there was a
10 question about where the dead fish are coming from and
11 speculation was from the Salton Sea, and that's correct.

12 And information from the LEA indicates that
13 there's almost a cyclical nature where there's a mass
14 die-off of fish because of a viral infection. And so
15 this site and the other site are, have been taking the
16 fish that are gleaned from that and disposing of them at
17 the sites.

18 BOARD CHAIR MOULTON-PATTERSON: Any questions?

19 Mr. Medina.

20 BOARD MEMBER MEDINA: Yeah, I had just one
21 question. I notice that this landfill is one of ten
22 landfills operating without a permit that has not been
23 updated.

24 What is the current status of the other
25 landfills without dated permits?

1 MS. HAMBLETON: As I indicated earlier -- well,
2 I didn't mention it earlier, but this particular LEA has
3 been, was evaluated and has been placed on a work plan.
4 And according to that work plan the permits are just now
5 coming in. This is number two. You'll hear number three
6 in a minute. And number four and number five are
7 proposed for April and May. And others are coming in as
8 we move down through the year.

9 So they are on a schedule, and we hope that they
10 will be adhering to that schedule.

11 BOARD MEMBER MEDINA: Thank you.

12 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
13 you.

14 BOARD MEMBER JONES: Madam Chair.

15 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

16 BOARD MEMBER JONES: This is going from five to
17 55, correct?

18 MS. HAMBLETON: Correct.

19 BOARD MEMBER JONES: I'm going to move adoption
20 of Resolution 2001-73, consideration of a revised solid
21 waste facility permit for the Niland solid waste site in
22 Imperial County.

23 BOARD MEMBER MEDINA: Second.

24 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
25 motion by Mr. Jones and seconded by Mr. Medina.

1 Please call the roll.

2 BOARD SECRETARY VILLA: Eaton.

3 BOARD MEMBER EATON: Aye.

4 BOARD SECRETARY VILLA: Jones.

5 BOARD MEMBER JONES: Aye.

6 BOARD SECRETARY VILLA: Medina.

7 BOARD MEMBER MEDINA: Aye.

8 BOARD SECRETARY VILLA: Paparian.

9 BOARD MEMBER PAPARIAN: Aye.

10 BOARD SECRETARY VILLA: Roberti.

11 BOARD MEMBER ROBERTI: Aye.

12 BOARD SECRETARY VILLA: Moulton-Patterson.

13 BOARD CHAIR MOULTON-PATTERSON: Aye. It's noon

14 time and we have a representative from the A.G.'s office

15 here for our closed session. My suggestion is we do

16 that, it's a brief one, right now -- oh, are we, did I

17 forget something? I thought maybe I forgot to vote or

18 something. Thank you.

19 And we'll return and do the remainder of the

20 agenda at 2:00.

21 (Thereupon there was a discussion off the

22 record.)

23 BOARD CHAIR MOULTON-PATTERSON: Oh, okay, I'm

24 sorry, we'll do Salton Sea, because you can leave then,

25 real quickly. I'm so sorry, that's why you were

1 waiting. Okay.

2 We're onto number 24.

3 BOARD MEMBER JONES: But the rest of you have to
4 stay.

5 BOARD CHAIR MOULTON-PATTERSON: Right. Thank
6 you, Mr. Jones. Thank you for waiting.

7 MS. NAUMAN: That's why Suzanne was still
8 standing at the podium too. This is consideration of a
9 revised solid waste facility permit for the Salton City
10 solid waste site in Imperial County.

11 MS. HAMBLETON: Okay, I'll make this brief. The
12 proposed permit will allow for the following changes:

13 An increase in tonnage from less than one ton
14 per day to a maximum of ten tons per day;

15 A decrease in the waste footprint from 320 acres
16 to 7.8 acres;

17 A change in the permitted hours of operation
18 from 24 hours a day seven days a week to Wednesday and
19 Saturday from 7:00 a.m. to 4:00 p.m.;

20 A change in the closure date from the year 2030
21 to the year 2019;

22 And an acceptance of an additional waste type.

23 Board staff have determined that all the
24 requirements for the proposed permit have been met, and
25 we recommend that the Board adopt solid waste facility

1 permit decision 2001-75 concurring in the issuance of
2 permit number 13-AA-0001.

3 BOARD MEMBER JONES: Madam Chair.

4 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

5 BOARD MEMBER JONES: I want to move adoption of
6 Resolution 2001-75, consideration of a revised solid
7 waste facility permit for the Salton Sea solid waste site
8 in Imperial County.

9 BOARD MEMBER MEDINA: Second.

10 BOARD MEMBER JONES: And that's it.

11 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
12 motion by Mr. Jones, seconded by Mr. Medina.

13 Please call the roll.

14 BOARD SECRETARY VILLA: Eaton.

15 BOARD MEMBER EATON: Aye.

16 BOARD SECRETARY VILLA: Jones.

17 BOARD MEMBER JONES: Aye.

18 BOARD SECRETARY VILLA: Medina.

19 BOARD MEMBER MEDINA: Aye.

20 BOARD SECRETARY VILLA: Paparian.

21 BOARD MEMBER PAPARIAN: Aye.

22 BOARD SECRETARY VILLA: Roberti.

23 BOARD MEMBER ROBERTI: Aye.

24 BOARD SECRETARY VILLA: Moulton-Patterson.

25 BOARD CHAIR MOULTON-PATTERSON: Aye. Okay.

1 Now we'll go into closed session and return at 2:00

2 o'clock.

3 Thank you.

4 (Thereupon the Board members went into

5 closed session.)

6 (Thereupon the luncheon recess was taken.)

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1 AFTERNOON SESSION

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: I'd like to
4 call the meeting back to order please.

5 Secretary, would you please call the roll?

6 BOARD SECRETARY VILLA: Eaton.

7 (No response.)

8 BOARD SECRETARY VILLA: Jones.

9 BOARD MEMBER JONES: Here.

10 BOARD SECRETARY VILLA: Medina.

11 BOARD MEMBER MEDINA: Here.

12 BOARD SECRETARY VILLA: Paparian.

13 BOARD MEMBER PAPARIAN: Here.

14 BOARD SECRETARY VILLA: Roberti.

15 BOARD MEMBER ROBERTI: Here.

16 BOARD SECRETARY VILLA: Moulton-Patterson.

17 BOARD CHAIR MOULTON-PATTERSON: Here.

18 Ex-partes, Mr. Jones.

19 BOARD MEMBER JONES: Kelly Astor, Chuck Helget,
20 and Matt Cotton.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you.

22 Mr. Paparian.

23 BOARD MEMBER PAPARIAN: I just said hi to Kelly
24 Astor and John Cupps and some of the folks from the North
25 Valley Coalition.

1 BOARD CHAIR MOULTON-PATTERSON: Thank you.

2 Senator Roberti.

3 BOARD MEMBER ROBERTI: No ex-parte.

4 BOARD CHAIR MOULTON-PATTERSON: And I have none.

5 Okay. We left off on number 25, and I'll turn
6 it back over to Julie.

7 I'd just like to remind the audience that there
8 are speaker slips back on that table if you wish to
9 speak. We have a lot of speakers this afternoon, so I
10 would ask that you try and keep it five minutes or less,
11 we'd really appreciate it.

12 And please, no cell phones. Thank you.

13 All right, Ms. Nauman.

14 MS. NAUMAN: Thank you. Item 25 is
15 consideration of a revised solid waste facility permit
16 for the Pebbly Beach disposal site in Los Angeles County.

17 Bill Marciniak will be making the presentation.

18 BOARD CHAIR MOULTON-PATTERSON: Good afternoon.

19 MR. MARCINIAK: Good afternoon, Madam Chair and
20 Board members.

21 I'm Bill Marciniak of the Permitting and
22 Inspection Branch, and I will be presenting item number
23 25, which is consideration of a revised solid waste
24 facility permit for the Pebbly Beach disposal site in Los
25 Angeles County.

1 The facility will be operated by Consolidated
2 Disposal Services doing business as Seagull Sanitation
3 Systems.

4 The proposed permit will allow the use of a
5 20,000 square foot material recovery facility, a
6 municipal solid waste composting operation. And it will
7 allow an increase in the elevation of the landfill from
8 230 feet to 260 feet above sea level, and a horizontal
9 expansion of the landfill's permitted boundary to now
10 include areas that had historically received waste.

11 The permitted acreage of the site will increase
12 from 6.2 to 7.7.

13 Disposal acreage will increase from 3.3 to 5.6.
14 These increases will provide for approximately 86,000
15 more cubic yards of refuse, and change the date,
16 estimated date of closure from the year 2004 to 2033.

17 The permit will also reflect the change in the
18 owner from Santa Catalina Island Company to the City of
19 Avalon.

20 The LEA has certified that the application
21 package is complete and correct and has made the
22 following findings:

23 The disposal facility is identified in the
24 countywide siting element;

25 Proposed permit will be consistent with the

1 standards adopted by the Board;

2 And the California Environmental Quality Act has
3 been complied with.

4 The proposed permit in your agenda item package
5 has been replaced by a new proposed permit with a change
6 in the disposal acreage and some additional permit
7 conditions suggested by Board staff, and is available in
8 the lobby.

9 Board staff have reviewed the proposed permit
10 and supporting documentation and found them to be
11 acceptable.

12 However, Board staff of the Office of Local
13 Assistance have determined that the disposal facility is
14 identified in a countywide site element, and the
15 material recovery facility is identified in the City of
16 Avalon's non-disposal facility element, but the compost
17 facility also needs to be identified in the non-disposal
18 facility element of the City of Avalon.

19 Therefore, the Office of Local Assistance staff
20 cannot make a recommendation at this time. Staff of the
21 Office of Local Assistance are available to address this
22 issue today.

23 Nevertheless, in conclusion, staff would
24 recommend the Board adopt solid waste facility permit
25 decision number 2001-74 concurring with the issuance of

1 solid waste facility permit 19-AA-0061 if the Board finds
2 the facility consistent with the county's integrated
3 waste management plan.

4 Mr. Dunn Stockenberg of the Los Angeles County
5 local enforcement agency, Mr. John McNamara of
6 Consolidated Disposal Services, and the operator's
7 consultant, Mr. Matthew Cotton, are available to answer
8 any questions that you may have.

9 BOARD CHAIR MOULTON-PATTERSON: Thank you very
10 much.

11 Senator Roberti.

12 BOARD MEMBER ROBERTI: Yeah, I have a, I'm
13 confused. I visited Pebbly Beach, and it is in the
14 unincorporated portion of Los Angeles County.

15 MR. MARCINIAK: Uh-huh.

16 BOARD MEMBER ROBERTI: So why is the proposal
17 that it should be, that the various facilities should be
18 identified within the city, the footprint of the City of
19 Avalon?

20 MR. SCHIAVO: Good afternoon, Pat Schiavo from
21 the Diversion, Planning and Local Assistance Division.

22 According to PRC statute, a facility that is, a
23 jurisdiction that is using a particular facility must
24 identify that facility, and that's why. So the County of
25 Los Angeles is actually going to be utilizing the

1 facility.

2 BOARD MEMBER ROBERTI: So the County of Los
3 Angeles will be utilizing the facility.

4 MR. SCHIAVO: That's my understanding -- the
5 City of Avalon.

6 BOARD MEMBER ROBERTI: Okay. The City of
7 Avalon.

8 MR. SCHIAVO: Yes.

9 BOARD MEMBER ROBERTI: So they have to identify
10 it within their --

11 MR. SCHIAVO: Right.

12 BOARD MEMBER ROBERTI: And they did not do that,
13 I take it?

14 MR. SCHIAVO: Right. The question at hand is,
15 the material recovery facility is identified, so there is
16 a location identified, however the word compost or the
17 identification of the compost facility was not
18 identified, even though they are utilizing the same site.
19 So the issue is, are we only looking at location, which
20 means that you could have multiple type facilities
21 utilizing the location, or do you have to identify the
22 types of facilities and the location?

23 CHIEF LEGAL COUNSEL TOBIAS: I think what this
24 gets to is does the Board consider this to be within the
25 confines of the dot on the map type of situation. Where

1 in this case you have a different facility going in
2 there, there's a facility that's marked on, that says
3 there's a facility there, a different, the composting
4 facility is going in there; so is that the same? It kind
5 of opens up the situation.

6 BOARD MEMBER ROBERTI: So we're saying, what's
7 being proposed is that they probably would have to have
8 separate permits?

9 MR. SCHIAVO: No.

10 BOARD MEMBER ROBERTI: Yeah. Please explain.

11 MR. DE BIE: Permit-wise it's always the option
12 of the operator to decide whether they want to permit
13 various aspects of their operation under separate permits
14 or group them under one permit. And in this case --

15 BOARD MEMBER ROBERTI: They want to group it,
16 they want to take it under, they want to group it under
17 one permit.

18 MR. DE BIE: It's one permit that will regulate
19 the landfill operations, the MRF operations, as well as
20 the compost facility operations. So there's just the one
21 permit.

22 BOARD MEMBER ROBERTI: And we, our staff is
23 suggesting that it has to be grouped under multiple
24 permits?

25 MR. DE BIE: No.

1 BOARD MEMBER ROBERTI: No, okay.

2 MR. DE BIE: We are not suggesting that they
3 have to get multiple permits.

4 MR. SCHIAVO: This is just identification for
5 purposes of the conformance finding. And the question we
6 have is does it, is it only location that we're looking
7 at, or is it location and the types of activities that
8 are taking place on the location, meaning do you have to
9 identify the compost facility and the materials recovery
10 facility even though they're at the same location?

11 BOARD MEMBER ROBERTI: Well from -- and what is
12 staff recommending?

13 MR. SCHIAVO: We're taking a position of no
14 recommendation because we've never gone this route
15 before. It was our intent initially when we were going
16 forward that the NDFE or the non-disposal facility
17 element would go through the public process and be
18 approved; and so when that didn't occur, we stepped back
19 and took no recommendation to allow the Board to make a
20 decision.

21 BOARD MEMBER ROBERTI: And the City of Avalon
22 and the operator are suggesting that we have a more
23 expansive concept of what dot on the map means and
24 what --

25 MR. SCHIAVO: That's essentially it. That's

1 right.

2 CHIEF LEGAL COUNSEL TOBIAS: Well I don't know
3 that it's the city that's actually suggesting that, it's
4 the situation that's bringing us to that. Because we
5 would have ordinarily, had we known that this situation
6 was going to occur, we probably would have had, as we
7 traditionally do, a policy item first, asking you how
8 would you like to handle this, and then have the permit
9 come in.

10 Because there was a delay in getting that
11 approval, now the Board is brought to the situation where
12 you now have the permit in front of you, you don't have
13 the NDFE amended, and so to a certain extent the
14 question, I think at least for the legal office, is to
15 what extent, if you approve the project today, does that
16 kind of answer that policy question with the NDFE's? And
17 set a precedent --

18 BOARD MEMBER ROBERTI: Well can it be argued
19 without setting a precedent on other NDFE's that Avalon
20 is a unique situation, they have nowhere else to go? And
21 if they try to create other locations, they're almost
22 going to be stuck to expanding into a conservation area,
23 which neither the residents of Avalon nor the public in
24 general are going to want.

25 So in their particular situation, because they

1 really have almost nowhere else to go except where they
2 are, that we take into consideration the fact that one
3 permit should suffice.

4 Three permits -- I'm thinking out loud, I'll be
5 critiqued if I'm wrong. Three permits would seem to give
6 the possibility that we're going to look elsewhere other
7 than on that dot on the map for the location, and I don't
8 think anybody would find that terribly desirable.

9 CHIEF LEGAL COUNSEL TOBIAS: Well perhaps
10 another way of trying to narrow the Board's decision
11 today is to say that in this situation, it's certainly
12 clear that most of the island knows what's going on with
13 this particular project. So if you look at the process
14 of, you know, looking at the plans and looking for
15 consistency and going through the process of amending the
16 plans, perhaps, you know, and I don't know if this is a
17 stretch or not.

18 BOARD MEMBER ROBERTI: Yes.

19 CHIEF LEGAL COUNSEL TOBIAS: But, you know, to a
20 certain extent at least, the public notice and the aspect
21 of the fact that everybody there knows what's happening
22 with it.

23 BOARD MEMBER ROBERTI: Right, it's a very
24 self-contained community.

25 CHIEF LEGAL COUNSEL TOBIAS: It's probably met.

1 So I don't know, but that seems a little bit reaching.
2 But I do have some concerns from a legal side of things
3 that, you know, once the Board does this it's somewhat
4 hard to start saying to other people, well, we've missed
5 the deadline or not had time to get theirs done, and the
6 permit's pushing that process, what they should do.

7 BOARD MEMBER ROBERTI: Madam Chair, one last
8 observation from me is that I'm prepared to vote for this
9 permit with the very open observation that I'm doing so,
10 first, because it is such a self-contained community,
11 most, almost everyone knows what is taking place, so we
12 don't have a notice problem to the extent we would have
13 somewhere else.

14 And number two, there is almost nowhere else to
15 locate these facilities except at that one location,
16 which is something that's very unique to Catalina Island.

17 With those provisos I can vote for this, and I
18 think if that somehow is in the record that we aren't
19 establishing a precedent for other NDFE's.

20 BOARD CHAIR MOULTON-PATTERSON: Thank you,
21 Senator Roberti.

22 We do have speaker slips.

23 Mr. Jones.

24 BOARD MEMBER JONES: Just a couple of things.
25 The landfill is in the siting element, and the MRF is in

1 the NDFE. What we are talking about is the operation of
2 a composting facility that has already been identified in
3 both of the items, in both, in both the, not the
4 composting activity, but the landfill activity and the
5 MRF activity.

6 Doesn't the NDFE, doesn't the statute read that
7 a facility that's been, that, that requires an NDFE
8 doesn't have to be held up because of the NDFE, but has
9 to be included in the five year review?

10 MR. SCHIAVO: I really can't recall that.

11 BOARD MEMBER JONES: I'll find the statute for
12 you.

13 MR. SCHIAVO: Okay.

14 BOARD MEMBER JONES: It was part of our
15 discussion on the other thing. I mean I'd like somebody
16 to look for it because I think it's important.

17 There is a five year review issue with NDFE's.
18 Because an NDFE doesn't go through the same process as a
19 siting element from the standpoint of CEQA.

20 So what we're talking about here is a RDSI, the
21 report of disposal information, that included those
22 activities in the permit. It included composting in the
23 permit at a landfill that was part of the siting element,
24 and the material that was being recovered out of the
25 waste stream at a MRF that has been identified in an

1 NDFE.

2 And I only bring this up because I understand
3 where the Senator is coming from, but I'm not sure that
4 the parameters need to be that narrow just based on the
5 facts of the issue here.

6 And if somebody could find that piece.

7 CHIEF LEGAL COUNSEL TOBIAS: We're looking it
8 up.

9 BOARD MEMBER JONES: It's critical to this, to
10 this, it's kind of critical. And I haven't read it for a
11 long time, so you gotta kind of bear with me.

12 But it seemed to me there is a piece in here
13 that says that it can be amended in the five year review
14 on an NDFE. Now I don't know if that's right.

15 I'm going to read this after I'm done talking,
16 it's not fair to everybody, but then I know Mr. Paparian
17 wants to say something.

18 I think we have to be clear to the facts of the
19 operation. And the fact that we're talking about an
20 operation within the facility, that's what's at issue
21 here, and not one that's going to get a separate permit.

22 So I think that, that has to be part of the
23 discussion.

24 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian --
25 but before you go, Mr. Paparian, Mr. Eaton, do you have

1 any ex-parte for the record.

2 BOARD MEMBER EATON: No, none to report. Thank
3 you.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you.
5 Mr. Paparian.

6 BOARD MEMBER PAPARIAN: I wanted to get the
7 attention of counsel so I'll just wait until she's done
8 there.

9 BOARD CHAIR MOULTON-PATTERSON: Ms. Tobias.

10 CHIEF LEGAL COUNSEL TOBIAS: I'm sorry.

11 BOARD MEMBER PAPARIAN: Do you want to answer
12 that other question first before I ask you something?

13 CHIEF LEGAL COUNSEL TOBIAS: Well, I just, I
14 wonder if Mr. Jones is talking about 41736, is that where
15 you are?

16 BOARD MEMBER JONES: I don't know, I'm like
17 three away in my reading, so --

18 CHIEF LEGAL COUNSEL TOBIAS: Do you want to ask
19 a question?

20 BOARD MEMBER PAPARIAN: Okay. Now I just want
21 to make sure I'm tracking this all right. I heard
22 counsel suggest a concern about the precedent that would
23 be set by this.

24 I heard Senator Roberti give an explanation why
25 he felt that this would not be a precedent that could be

1 used by others.

2 But I didn't hear a response whether counsel
3 agreed with Senator Roberti that if one of us were to
4 vote for this, it couldn't come back and be used as a
5 precedent in other cases. So I want to --

6 CHIEF LEGAL COUNSEL TOBIAS: Well I think that
7 what the Board may want to do here is try to make your
8 findings as best you can today based on whatever limiting
9 or whatever circumstances you see that defines why you
10 would vote for this, even though the NDFE is kind of
11 hanging out there.

12 And then what we probably need to do is bring
13 back a policy item on the NDFE's to ask you, you know, is
14 this the dot on the map issue or something else. Are
15 you, you know, what do you want to do with it, the same
16 way we did with the siting element.

17 I think the concern -- and again not to argue
18 for or against it. But in this case I'm not sure that
19 staff in general is, because of the factors that Senator
20 Roberti mentioned, this one might be okay, and you might
21 be able to draw those limiting circumstances.

22 However, I think the problem might be, what if
23 the next time it's a different type of facility that
24 people, you know, that should be noticed, that doesn't
25 necessarily fit right in with the existing facility?

1 And so I think staff doesn't know what the Board
2 wants to do on this. Is it the same dot on the map
3 issue, or is it slightly different? We just don't have
4 your guidance at this point, so we're kind of --

5 BOARD MEMBER PAPARIAN: But can you help us
6 craft something so that it does not serve as a precedent?

7 CHIEF LEGAL COUNSEL TOBIAS: Well I think you
8 can say that you don't consider it a precedent. I think
9 Senator Roberti named two that I think are good; the fact
10 that everybody does know because of the confined area in
11 which this has occurred, because it's gone on for such a
12 long time; plus, where else could you put it?

13 So it is somewhat limited, and I think at that
14 point the Board should make it clear that before this
15 comes up again that they would like to, you know, be able
16 to consider this in a policy discussion so that you could
17 give staff and the rest of the operators and public your
18 sense of how you would like to address this.

19 BOARD MEMBER PAPARIAN: We may want to capture
20 what you just said in the whereases if we adopt this
21 resolution then.

22 CHIEF LEGAL COUNSEL TOBIAS: I think we could
23 do that, I also think that if the Board so directs in the
24 resolution, that we could take the factors that Senator
25 Roberti brought up and put those into the whereases as we

1 go. I'm not sure we necessarily have to do that right
2 this minute. But, you know, all this is the
3 administrative record, the hearing, so I think we can
4 fold that in.

5 BOARD MEMBER PAPARIAN: Thank you.

6 BOARD CHAIR MOULTON-PATTERSON: Thank you for
7 your help. I think we'll go now to the speakers.

8 Rob Clark from the City of Avalon, City Manager.
9 Good afternoon.

10 MR. CLARK: Thank you very much. It's a
11 pleasure to be before you today.

12 This project is a culmination of an eight year
13 \$3.2 million effort by a very, very small town on an
14 island. And it will allow us to stop burning and to
15 start diverting our trash which are two problems that
16 have been chronic at our site.

17 So we very much appreciate the support that the
18 Board has given us over time, and your staff has given us
19 over time, and we hope that you're able to concur with
20 the permit.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you. John
22 McNamara, Seagull Sanitation.

23 MR. MCNAMARA: Yeah, I really don't have
24 anything else to say, just supporting what Rob is doing.

25 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank you

1 for being here. Matt Cotton? No.

2 Mike Mohajer, L.A. County.

3 MR. MOHAJER: Madam Chair, member of the Board,
4 my name is Mike Mohajer, I'm here representing Los
5 Angeles County Department of Public Works.

6 For the record, I have been involved with this
7 landfill also for the past eight years. And the county
8 and the NDFE was prepared in 1994. The county land was
9 permitted for the facility, which included the landfill,
10 composting, and the MRF. They were granted sometime in
11 '97 or '98, John? '98.

12 And so the issue of the composting has always
13 been as part of a land use permit, and has gone through a
14 whole process, and there has been an EIR as well as the
15 negative dec for this specific composting aspect.

16 And I believe Mr. Jones is correct when he says
17 that really when the whole issue of NDFE was developed
18 and the legislation was written, that the legislation
19 very specifically indicated that you can delay updating
20 your NDFE until at the time of the five year review. So
21 not at any time that it gets developed, you have to go
22 and revise the document again.

23 And for this particular facility, as Senator
24 Roberti also indicated, has been going on for so long.
25 And you have to look at it relative to making a decision

1 to protect public health and safety. And that's what the
2 whole purpose is, they want to stop burning trash and put
3 it to a beneficial use. And so from that standpoint we
4 also recommend your Board to approve the proposal for the
5 solid waste permit.

6 In reference to the issue of NDFE, that also I
7 agree, that's a policy decision that your Board could
8 address at a later date, and should be addressed for,
9 because this is the sort of situation that could happen
10 more and more as time goes on.

11 Thank you.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
13 Mohajer.

14 Mr. Jones.

15 BOARD MEMBER JONES: Madam Chair. I'm going to
16 try to get enough on the record here while I make this
17 motion. I want to move adoption of resolution 2001-74,
18 consideration of a revised solid waste facility permit
19 for the Pebbly Beach disposal site in L.A. County, a site
20 that will include a composting operation at, as part of
21 the, that was identified as part of the RDSI, that is in
22 a preapproved MRF that was identified in the NDFE, and
23 will operate at a landfill which is part of a preapproved
24 siting element.

25 And that's my motion and I'm sticking to it.

1 BOARD MEMBER PAPARIAN: Just to clarify, I'm

2 a --

3 BOARD CHAIR MOULTON-PATTERSON: I'll second the
4 motion just to get it out there.

5 Mr. Paparian.

6 BOARD MEMBER PAPARIAN: Are you also then
7 incorporating the items that counsel and Roberti
8 suggested that would go into the whereases?

9 BOARD MEMBER JONES: I think that by identifying
10 it the way I did in the motion that that tightens that up
11 as tight as it, as I can see that it -- I mean it's
12 identifying that these three entities, these three
13 operations were identified in the RDSI, and they are
14 being located at a landfill that is on the siting
15 element, and a MRF that is part of the NDFE.

16 BOARD MEMBER PAPARIAN: Okay. Can I ask counsel
17 then, is that -- if I liked what was out there before, am
18 I going to like this?

19 CHIEF LEGAL COUNSEL TOBIAS: I would prefer,
20 with all due respect, to have the, I like these and I
21 think this rounds it out, but I would also like to have
22 the, either in the whereases or in the motion, basically
23 what was mentioned before which was that, you know, that
24 there is general public knowledge due to the locale, and
25 that, you know, there are a dearth of sites that would be

1 available for this type of facility.

2 And we could either have that in the motion or
3 in the whereases.

4 BOARD CHAIR MOULTON-PATTERSON: Okay. I see
5 the --

6 BOARD MEMBER JONES: I'll add a whereas, Madam
7 Chair. I'll add a whereas these facilities have gone
8 through the public process; and whereas all of those
9 operations have been identified; and the Board deems to
10 concur the permit application complete. Does that work?

11 CHIEF LEGAL COUNSEL TOBIAS: How about, do you
12 not want to put in the part, do you not want to put in
13 the part about that there are no other appropriate sites?

14 BOARD MEMBER JONES: Sure.

15 CHIEF LEGAL COUNSEL TOBIAS: Okay.

16 BOARD MEMBER JONES: And there's no other
17 appropriate sites.

18 CHIEF LEGAL COUNSEL TOBIAS: Okay, that would be
19 great. Thank you.

20 BOARD MEMBER PAPARIAN: Does that cover all of
21 the -- you're saying yes?

22 CHIEF LEGAL COUNSEL TOBIAS: Yes.

23 BOARD MEMBER PAPARIAN: Okay.

24 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
25 motion by Mr. Jones, seconded by Moulton-Patterson with,

1 for resolution 2000-1 -- 2001-74 with the changes, and
2 I'll be voting for this because I also visited and
3 thought it was a unique situation.

4 CHIEF LEGAL COUNSEL TOBIAS: One more. And does
5 the Board intend that this not serve as a precedent due
6 to the unique circumstances? Do you need that in there
7 or do you just want to leave it with the -- I'm open, but
8 I'm just asking because we did talk about that.

9 BOARD MEMBER JONES: Does it need to be part of
10 this motion?

11 CHIEF LEGAL COUNSEL TOBIAS: I beg your pardon?

12 BOARD MEMBER JONES: Does it need to be part of
13 this motion --

14 CHIEF LEGAL COUNSEL TOBIAS: No.

15 BOARD MEMBER JONES: -- that these conditions
16 were unique because of the split siting --

17 CHIEF LEGAL COUNSEL TOBIAS: I'm wondering if
18 you --

19 BOARD MEMBER JONES: -- it doesn't set a
20 precedent.

21 CHIEF LEGAL COUNSEL TOBIAS: Okay. Great.

22 BOARD CHAIR MOULTON-PATTERSON: Okay. Please
23 call the roll.

24 BOARD SECRETARY VILLA: Eaton.

25 BOARD MEMBER EATON: Aye.

1 BOARD SECRETARY VILLA: Jones.

2 BOARD MEMBER JONES: Aye.

3 BOARD SECRETARY VILLA: Medina.

4 (No response.)

5 BOARD SECRETARY VILLA: Paparian.

6 BOARD MEMBER PAPARIAN: Aye.

7 BOARD SECRETARY VILLA: Roberti.

8 BOARD MEMBER ROBERTI: Aye.

9 BOARD SECRETARY VILLA: Moulton-Patterson.

10 BOARD CHAIR MOULTON-PATTERSON: Aye.

11 MR. DE BIE: Madam Chair, before you leave this
12 item I just wanted to ask one thing and also do some
13 recognitions very quickly with your indulgence.

14 At the briefing I had mentioned that we, Board
15 staff will be providing guidance to the LEA relative to
16 the use of the incinerator. Again, this whole project is
17 to avoid the use of the incinerator except for emergency
18 situations.

19 Board staff and the operator feel that those
20 emergency situations are limited to natural disasters and
21 emergencies as identified by, you know, the mayor or
22 county officials or the Governor. And the LEA sees a
23 need for more flexibility.

24 So staff is wishing to, you know, define
25 emergency on behalf of the Board for the LEA to give them

1 guidance. And so if the Board members are willing to
2 provide some guidance to staff so that we can develop
3 that letter, that would be much appreciated --

4 BOARD CHAIR MOULTON-PATTERSON: Okay.

5 MR. DE BIE: -- in what we're determining an
6 emergency to be.

7 BOARD CHAIR MOULTON-PATTERSON: Do we need to
8 put anything on the record?

9 MR. DE BIE: No.

10 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
11 you.

12 BOARD MEMBER MEDINA: Madam Chair, if you could
13 record an aye vote for the last item?

14 BOARD CHAIR MOULTON-PATTERSON: Certainly. We
15 have Mr. Medina, aye.

16 And Mr. Medina, do you have any ex-partes?

17 BOARD MEMBER MEDINA: I do not.

18 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
19 you. Thank you very much.

20 INTERIM EXECUTIVE DIRECTOR BRUCE: Madam Chair,
21 could I just ask if it would be the wishes of the Board
22 that staff do come back with a policy item that you could
23 address having to do with the dot on the map for NDFE's?

24 BOARD CHAIR MOULTON-PATTERSON: We didn't do
25 that, huh?

1 INTERIM EXECUTIVE DIRECTOR BRUCE: No. Well,
2 I'm just wondering --

3 BOARD CHAIR MOULTON-PATTERSON: I don't mean
4 now.

5 INTERIM EXECUTIVE DIRECTOR BRUCE: Well no, no,
6 you didn't. We're just asking for direction now if you
7 would like another item to come back for you to address
8 that.

9 BOARD CHAIR MOULTON-PATTERSON: Does the Board
10 have a problem with that?

11 Mr. Paparian.

12 BOARD MEMBER PAPARIAN: We have a number of
13 other policies to come before us as well, and I would
14 just hope that this wouldn't bump some of what I consider
15 to be the more important policies just to come before the
16 Board.

17 BOARD CHAIR MOULTON-PATTERSON: Right. Good
18 point.

19 INTERIM EXECUTIVE DIRECTOR BRUCE: Okay. Thank
20 you.

21 BOARD CHAIR MOULTON-PATTERSON: Okay. Item 26
22 was pulled at the request of the City of San Diego, or
23 was continued at the request of the City of San Diego.

24 So we'll now go to item 27. Ms. Nauman.

25 MS. NAUMAN: This is consideration of

1 suspension, revocation, or modification of the Board's
2 permit enforcement policy. I believe Mary
3 Madison-Johnson will begin the presentation.

4 MS. MADISON-JOHNSON: Yes, Madam Chairman,
5 Chairwoman, and members of the Board. I am Mary
6 Madison-Johnson with the Permitting and Inspection
7 Branch.

8 This item is prepared to enable you to review,
9 discuss, and act upon procedures related to the LEA's
10 ability to issue notice and orders to operators who are
11 violating their terms and conditions of their solid waste
12 facility permit. And includes information developed
13 through the use of a stakeholder work group.

14 This policy was initially considered and adopted
15 by the Board at the November 27, 1998 Board meeting. The
16 Topic was discussed at the July and August solid waste
17 facility permit and process issue workshops. At the
18 August 2000 workshops the Board directed staff to form a
19 work group of stakeholders to discuss the continued use
20 of this policy, and come back to the Board with a
21 proposal for changes.

22 I will now --

23 BOARD CHAIR MOULTON-PATTERSON: We're having
24 difficulty hearing, could you speak a little closer?

25 MS. MADISON-JOHNSON: I'm sorry.

1 BOARD CHAIR MOULTON-PATTERSON: It's the mikes,
2 it's not you.

3 MS. MADISON-JOHNSON: I will now very briefly
4 update you regarding the staff's response to your
5 direction, leaving the bulk of the time on this item left
6 for discussion of the options.

7 We assembled a stakeholder work group of
8 individuals who have been intricately involved with this
9 issue. The work group comprises of representatives from
10 industry, both public and private, LEA's, environmental
11 groups, the public, Board member offices, Board legal
12 office, and Board staff.

13 We met with each group and sought their thoughts
14 and needs relating to the policy. Summaries of these
15 discussions is included as attachment six.

16 To follow up on the State Auditor's report
17 recommendation, we also received a legal opinion relative
18 to the policy's consistency with statute and regulation
19 from the Board's legal office. That is included as
20 attachment five.

21 The agenda item summarizes additional background
22 information. We have met twice with the entire work
23 group to develop possible options for your consideration.

24 The most recent meeting was a publicly noticed
25 workshop on March 13th, at which time 19 options were

1 identified. Votes were taken on those options
2 identifying levels of support by the workshop and work
3 group members. Those have been included in the agenda
4 item as the last three pages of attachment six.

5 If you will turn to those last three pages, Mr.
6 De Bie will review the top six options for you.

7 MR. DE BIE: Thank you, Mary. Again referring
8 to attachment six as revised, the last three pages is a
9 summary of the final input that staff received from the
10 work group at that workshop. And what staff has outlined
11 are, or included, is all 19 potential options that were
12 identified by the work group.

13 And then, as Mary indicated, we went through a
14 process of trying to set some sort of order or priority
15 to these. And basically we asked the work group members
16 to vote, a silent vote on which of these options they
17 would support, they could support more than one or they
18 could throw all of their support with any one of the
19 options.

20 And so the tally that you see behind each of
21 these options is the result of that vote. And again,
22 it's just staff's attempt to set some order and priority
23 to the list of 19.

24 And then staff have emphasized the top six
25 because they gained four or more votes. And then after

1 that it dropped off to being three or less, or some
2 didn't gain any support because, perhaps the work group
3 members decided to throw all their support on just a few
4 of the options.

5 So let me just run through the top six. We can
6 discuss any of these if you wish, but staff is prepared
7 to at least begin with the top six.

8 The first option deals with keeping the current
9 policy in place, and then going forward to develop
10 regulations that would set out more specific criteria on
11 when a notice and order could be issued to allow changes
12 to occur outside of a permit revision.

13 And the example, circumstances or criteria that
14 we have in here are just examples the were generated,
15 sort of through a brainstorming by the work group. It
16 would not be limited to these, or it may not even end up
17 including these, but it was just to provide the Board
18 with examples of what this criteria might be that would
19 eventually end up in a regulation package.

20 So again, option one would be to, at least for
21 the time being, keep the PEP policy in place, but then
22 move forward with developing the regulations.

23 Option two would recognize that there is a set
24 of enforcement regulations that are still with the Office
25 of Administrative Law, and we hope to have their approval

1 by the end of the month or early April.

2 That does allow the Board or provide the Board
3 an extra set of tools that we have not had before to
4 monitor and to effect compliance at sites where we see
5 extended timeframes occurring and compliance, timely
6 compliance not occurring, to step in and move that
7 process along.

8 And so this option basically indicates that the
9 Board should allow those enforcement regs to go into
10 place, be implemented, and to see if they would be
11 adequate to deal with any issues or concerns that the
12 Board has relative to the practices that are taking place
13 currently relative to notice and orders and terms and
14 conditions of the permit.

15 Option three specifically indicates that PEP
16 should be revoked and that new regulations be developed.
17 So option one and three are similar in that both propose
18 to do new regulations and set criteria, but option three
19 is different in that it indicates that the current policy
20 should be revoked now and then regulations prepared.

21 Option four also includes a revocation of PEP,
22 but instead of regulations, just providing LEA's with
23 guidance on setting out criteria on when they should
24 issue notice and orders or shouldn't, and what those
25 orders should be or shouldn't be.

1 So the difference from one and three is that
2 it's a guidance as opposed to a regulatory fix.

3 Option five is to again prepare regulations but
4 not focusing on enforcement, but recognizing that the
5 reason why in some instances notice and orders or
6 enforcement actions are taken instead of permit revisions
7 is that the change needs to happen more rapidly than the
8 current permit revision process would allow, and so
9 option five talks about developing regulations that would
10 set out a process that could be referred to as a permit
11 modification process; that might be more streamlined,
12 certainly shorter in timeframe than the current permit
13 revision process, that would perhaps allow certain kinds
14 of changes to occur under a modification as opposed to a
15 revision.

16 And again, going at, finding a solution to the
17 issues and concerns through a different tack, and that is
18 addressing the permit process as opposed to an
19 enforcement fix.

20 And then the one item that was attached to this
21 option is that any changes that are, that move through a
22 permit modification process would have to be consistent
23 with CEQA. So it would not be an attempt to sidestep
24 CEQA in any way, it would just be a more streamlined or a
25 shorter permit approval process.

1 And then item six is again speaking to revoking
2 PEP and then, and then taking enforcement actions
3 directly against the facilities operating outside terms
4 and conditions of their permit.

5 It's basically moving forward with the option
6 that says that it's inappropriate to allow changes to
7 occur outside the terms, outside the permit; and that the
8 appropriate way of dealing with that is to take
9 enforcement action and require the facilities to come
10 back into compliance as opposed to allowing extended
11 timeframes and permit revisions as the fix.

12 And then again there are seven through 19 of
13 other options that had some support or no support from
14 the work group. And again, staff is willing to talk
15 about these six in more detail or any of the other
16 options.

17 BOARD MEMBER PAPARIAN: Madam Chair.

18 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

19 BOARD MEMBER PAPARIAN: At our workshop last
20 week I pointed out that we had information from focus
21 groups of industry, LEA's, and staff, and I asked that
22 something comparable be prepared from an environmental
23 perspective, has that been done?

24 MR. DE BIE: Staff did not pursue a focus group,
25 per se, but we did have involvement from that workshop

1 from at least two individuals that I would, I would
2 indicate have the environmental concerns in mind, Mr.
3 Best being one and Kelly Smith being another.

4 And as a result of the workshop, option six, I
5 think, is the one that was at least supported by those
6 individuals as being an appropriate option.

7 So staff feel that their voice was heard in this
8 work group process, and that the results of that is
9 indicated in the options that we have in front of you.

10 And again, we did not pursue a definitive focus
11 group with, staff entered into this process with a
12 process that worked with, as Mary said, the stakeholders
13 that are intimately involved with PEP, that are either,
14 you know, issuing the notice and orders such as the
15 LEA's, or making the changes to the terms and conditions
16 and getting their input.

17 And we had, by design, waited until we had that
18 information in front of us to then share with the
19 environmental groups to get their feedback on that
20 information. And that we did through those work group
21 and then the workshop.

22 BOARD MEMBER PAPARIAN: Yeah, I have to say that
23 I am somewhat frustrated, because I did ask specifically
24 for some written information presenting the environmental
25 perspective so that we would have something comparable to

1 the other background we have on the industry perspective,
2 the LEA perspective, and the staff perspective on this
3 issue.

4 I understand that two members out of 19 who I
5 believe were in attendance and voting on your voting
6 thing could be characterized as representing the
7 environmental viewpoint. But in the way that that voting
8 was conducted, it also skewed the perspective towards the
9 industry perspective, because there were a lot more
10 members of industry there.

11 And I think it's just not quite right to point
12 out that by having option six on, by having option six on
13 here and described as option six, that that is somehow
14 comparable to the type of information we have a few pages
15 earlier on the industry focus group, which is five pages
16 long, and the LEA focus group which is four pages long,
17 and the staff focus group information which is five pages
18 long.

19 MS. NAUMAN: Mr. Paparian, just let me add that,
20 you know, we did respect the request that you made, and
21 we went back and discussed how we could present
22 information to you in a comparable format. And as Mark
23 indicated, we did not begin this process, and maybe that
24 was a mistake on our part, and I'll live with that if
25 that's your, you know, take on it too. But we didn't

1 have a focus group, per se, from the environmental
2 community, and so we were not able to use that same
3 format to represent the discussion that they participated
4 in.

5 And it has been somewhat of a struggle for us to
6 identify individuals to represent that perspective. And
7 we did our best to bring them into the process, but it
8 was not through a focus group.

9 BOARD MEMBER PAPARIAN: But I just heard that
10 you had two people there who you identify as having an
11 environmental viewpoint.

12 MS. NAUMAN: That's correct.

13 BOARD MEMBER PAPARIAN: And I think what I asked
14 for last week was something comparable to the focus group
15 information we have from the industry, from the LEA's,
16 and from staff. I don't want to belabor this.

17 MS. NAUMAN: No, and I understand.

18 BOARD MEMBER PAPARIAN: But I'm somewhat
19 frustrated, I feel like my request was just blown off.

20 MS. NAUMAN: We certainly did not do that. I'm
21 sorry if it appears that way.

22 MR. DE BIE: And I just wanted to indicate, as
23 Julie has, that's not our intent. I think Board staff
24 are, would seek guidance from the Board on groups or
25 individuals that we can contact that do represent the

1 environmental perspective and are willing and able to
2 come and participate.

3 In the past that's been a very difficult task to
4 find more than two or three to come to a workshop and be
5 prepared to discuss a fairly complex issue even with prep
6 from the Board.

7 You know, we contact, you know, the traditional
8 groups, the Sierra Club and the others to ask if they
9 have individuals that would be willing to participate,
10 and usually do not hear back or hear back that they're
11 unable to.

12 So we'll seek guidance from the Board or others
13 on how we can involve environmental groups more, but we
14 just haven't had good experience in the past in getting
15 that level of involvement that would be equal to the
16 involvement that is very easy to get, for obvious
17 reasons, from LEA, the community, and industry.

18 You know, there's some level of frustration on
19 Board staff's side too in trying to bring, bring that
20 input in.

21 I would like to add too that I feel if you look
22 at the results from the Board staff focus group, which
23 included myself and P and E staff as well as other staff
24 at the Board and the legal office, that many of the
25 elements in our focus group, I think complement those

1 that we heard from, at least those two individuals
2 representing the environmental group. I'm not saying
3 that they are their opinion, but I think it does
4 complement their opinion.

5 So I guess what I'm saying is Board staff has a
6 keen interest in protecting the environment, that's our
7 ultimate interest, and if we see any situation that would
8 jeopardize that, we would be one of the first to bring
9 that to your attention and to, you know, to find some way
10 to resolve that.

11 BOARD MEMBER PAPARIAN: I think in the future,
12 and we can have this discussion and we will have this
13 discussion soon, in the future if you're going to present
14 something that presents a perspective of different
15 communities, even if you only have one or two
16 environmental participants, I think you can, you can
17 characterize their views of things in a way that's
18 comparable to the views you're getting from industry and
19 others.

20 MR. DE BIE: Okay. Very good.

21 BOARD MEMBER JONES: Madam Chair.

22 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

23 BOARD MEMBER JONES: Just, I don't, I think
24 you're right, Mr. Paparian, as far as getting that done,
25 but it kind of troubles me as I'm listening to this

1 discussion from a different standpoint, viewpoint, as to
2 how certain people are and certain people aren't. You
3 know, staff kind of goes this way.

4 And you know, I just want to include this in the
5 discussion. That as a member of the industry when I got
6 confirmed, when Mark Murray from Californians Against
7 Waste went up and supported it, they said in the time
8 that there was not an environmental seat on the Board I
9 acted as the environmental seat.

10 And I think we're doing ourselves a disjustice,
11 a misjustice in understanding that LEA's, operators, the
12 citizens, and staff all need, all have a stake in keeping
13 the environment as pure as they can. And because you're
14 in the industry doesn't mean that somehow you are opposed
15 to that. Most of the people that come to the stakeholder
16 meetings dealing with regulations that are from the
17 industry want more regulations because it gets the hobos
18 out.

19 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

20 BOARD MEMBER PAPARIAN: Yeah. I don't deny that
21 we all have, from our perspectives, the best interest of
22 California at stake. And I also share Mark Murray's view
23 that many times before there was an environmental seat
24 filled here that Mr. Jones did, in fact, forcefully argue
25 from an environmental perspective on a number of items.

1 But just as industry may at times believe that
2 they are pushing a perspective that is helpful
3 environmentally, I think the environmental community at
4 the same time is pushing things that will benefit
5 California's economy and industry over the long term.

6 BOARD MEMBER JONES: I would agree.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you both.
8 Okay. We have a number of speakers that I think I'll
9 begin with now, and then we'll come back to the Board.

10 Chuck White.

11 MR. WHITE: Thank you, Madam Chair. Chuck White
12 with Waste Management. I'm handing out some letters you
13 should have received, all the Board members and key staff
14 should have received last Friday from an informal
15 coalition of several companies and organizations that
16 operate or represent operators of permitted landfills and
17 transfer stations and MRF's in California.

18 This includes Allied Waste; the California
19 Refuse Removal Council; the Los Angeles County Sanitation
20 Districts; NorCal Waste Systems; Rural Counties
21 Environmental Services Joint Powers Authority; Republic
22 Services, Inc.; the Solid Waste Association of North
23 America Chapter of SWANA; and Waste Management.

24 Our position is basically that we urge this
25 Board to take a holistic view of all of the various

1 permitting enforcement tools, policies, and regulations
2 that you have before you, and use that as a jumping off
3 spot for any modifications to the PEP policy.

4 For example, you've got this long term violation
5 policy, you have the solid waste facilities violating
6 minimum standards, you've got the brand new enforcement
7 regulations that are still pending before OAL, and as
8 were mentioned by the staff presentation, these will make
9 a significant contribution to providing more direct
10 linkage between the desires of this Board and the actions
11 and operations of LEA's with respect to notice and
12 orders.

13 So before you do anything precipitous in terms
14 of changing the existing PEP policy, I would urge that
15 you, you to take a holistic view of all of these
16 enforcement tools before you decide to proceed with any
17 particular action.

18 With respect to the, a PEP type of policy, we
19 firmly believe there is a clear and ambiguous in statute
20 and regulations for the Board to exercise, and LEA's to
21 exercise some degree of flexibility in enforcement.

22 And this was, in fact, stated in the Board's
23 legal opinion that was prepared recently which states,

24 "Thus, an enforcement agency is acting
25 within the scope of solid waste law when it

1 issues an enforcement order under PEP, and calls
2 for compliance by a certain date and/or
3 penalties of compliance is not timely achieved."

4 So clearly our point here is that the
5 legislature intended there to be some reasonable degree
6 of flexibility, to both time schedules of bringing
7 facilities into compliance. Not open-ended and going on
8 forever, but some reasonable degree.

9 And the reason we believe strongly in this is
10 that in cases for facilities which are operating without
11 permits, the legislature was very clear to the LEA's and
12 to this Board saying you shall issue cease and desist
13 orders in those kinds of operations that are totally
14 unauthorized, totally without permits, should cease
15 operation immediately.

16 However, with respect to facilities that are
17 already operating with respect to permits, the
18 legislature, we believe, was very clear in providing a
19 little more permissive latitude with respect to time
20 schedules and timeframes to bring these facilities into
21 compliance. And we believe this provides a very sound
22 legal and regulatory basis for some reasonable degree of
23 flexibility.

24 Now, all that being said, we believe that the
25 PEP policy has not always been fully and appropriately

1 implemented in all cases. We believe there have been
2 some abuses and, but we think if we, if a revised policy
3 or regulations that are written by this Board to clearly
4 lay out those situations that are compelling reasons for
5 a violation to continue, that that would be appropriate.

6 And we believe that the list prepared by the
7 LEA's as well as by the industry are a reasonable list of
8 those types of compelling reasons that warrant some
9 degree of flexibility on a PEP type policy or a PEP type
10 regulation. And particularly when there's other waste
11 management alternatives that could be considered, but
12 either would not relieve the situation or the problem at
13 hand.

14 And finally, we gotta make sure that if you do a
15 PEP type policy or regulation and apply it, that it
16 doesn't involve facilities that are presenting a threat
17 to human health or the environment.

18 Our recommendations are basically consistent
19 with option number one which, by the way, received far
20 and away the vast majority of support at the last work
21 group, with the slight maybe deference to option two; is
22 that we believe there needs to be a revised PEP policy.
23 We would be happy and pleased to work with you to craft
24 that policy in either a regulatory form or, preferably a
25 regulatory format. But we would like to make sure that

1 that is done in the full context of all the other
2 enforcement tools that are out there; such as the
3 long-term violation policy; such as the inventory
4 facilities abatement -- that fail minimum standards; and
5 then also these new regulations that are hopefully going
6 to be in place but are still pending before OAL.

7 And we'd very much like to move forward and work
8 cooperatively. But in the meantime we'd urge you to not
9 throw the PEP policy out as it is currently written, but
10 move into a transition to phase into some other more
11 appropriate and perhaps improved regulation or policy.

12 Thank you very much.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
14 White. Shawn Edgar.

15 MR. EDGAR: Shawn Edgar on behalf of California
16 Refuse Removal Council, 150 private, independent folks in
17 the recycling and solid waste business, I appreciate your
18 time to just take a few moments to echo Mr. White's
19 sentiments pertaining to a more holistic approach toward
20 resolving the larger enforcement issues of which PEP is
21 one part.

22 We recognize that as part of our work group
23 session during which staff we feel really contributed as
24 an honest broker in this process.

25 That we looked at the long term violation

1 strategy and long term violation policy that is under
2 consideration at this Board.

3 We looked at different state minimum standard
4 violator inventory lists that are out there, and some
5 thoughts maybe to update and change that.

6 We talked about the permit revision process in
7 general.

8 And we're looking out to the landscape, as part
9 of the outcome of the audit we may look at permit
10 revision process toward the longer term.

11 But in the shorter term we're looking at
12 enforcement regs that this Board adopted at its October
13 meeting in Eureka, and those enforcement regs also talk
14 about enforcement policy.

15 We have LEA advisory number 38 which is out
16 there, and so there seems to be a lot of, there is a lot
17 of volume in the permit enforcement world.

18 We believe that what is being called the
19 holistic approach, with some smaller bites to try and get
20 over the next month or two some deeper understanding of
21 that, we believe that would have some value,
22 understanding that there's, as staff, as the staff report
23 indicated and as your agenda package indicates, there's
24 quite a bit of overlap, duplication slash some obscure
25 ways that we can look at the different elements of

1 permit, the permit enforcement in general.

2 And so understanding that clarity will need to,
3 be needed to give to the LEA's, understanding that
4 there's very little clarity now, understanding that the
5 PEP that we're looking at reflects but a small part of
6 the overall Board agenda; we, we strongly encourage that,
7 we acknowledge that modification is probably appropriate,
8 seeing as the policy is eleven years old, it's geared
9 toward landfills, so it should probably be updated, no
10 question about it.

11 Yes, there have been some circumstances that, in
12 the different pieces of data out there that there have
13 been apparently some unpermitted facilities that have
14 fallen under the PEP. So there's definitely a time to
15 update this, and we wanted to echo that.

16 Very quickly on the staff inventory, we noticed
17 that, and I'm here on behalf of the private operators of
18 facilities, but staff had produced an inventory list of
19 looking at 21 facilities as part of our work group
20 process. Seventeen of those facilities were publicly
21 operated facilities, five were privately operated
22 facilities.

23 If you notice that SWANA was a signatory to our
24 letter, and Grace Chan was prepared to offer a few words
25 on their behalf if you would like to hear that; however

1 we'd like to say that it's not only a private operator
2 issue it's a public operator issue, and Mr. Bob Eppler
3 from San Diego with regard to Otay Landfill had a very
4 Impassioned letter discussing the particular intricacies
5 of keeping that facility moving with some additional
6 traffic issues.

7 So it's a public and a private thing. And if I
8 can just throw out one quick example from the private
9 side of the house. Blue Line Transfer Station, which
10 this Board approved that facility permit in the September
11 19th and 20th meeting of 1999, that facility was a
12 replacement facility for an existing facility that had
13 been in place since 1980.

14 The facility had been pushing the limits on the
15 six hundred ton a day operation, and for ten years had
16 investigated, and it took ten years of site selection,
17 CEQA process, as it's a very unique community there at
18 South San Francisco. There's not a lot of industrial
19 land. So it took a very long and involved process to
20 replace an existing facility providing service to
21 communities of South San Francisco, Millbrae, and
22 Brisbane.

23 And although the operator of that facility did
24 not have to use the PEP, a PEP type of policy would be
25 critical in, and I know that the permitting process in

1 general is going to be looked at, and we're saying that
2 maybe it's insufficient, but there's been an expression,
3 for instance, in the audit that the, the process by which
4 the Board concurs in permits, that it seems to be not
5 adequate with regard to some public participation.

6 We've heard those charges out there, and in this
7 case of the Blue Line facility where you have a ten year
8 process, a \$20 million investment to come down to
9 replacing a facility, we believe that this PEP type of
10 facility needs to be modified, and we're more than happy
11 to work with staff and the Board to achieve that.

12 Thank you for your time.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
14 Edgar.

15 Grace Chan.

16 MS. CHAN: Madam Chair, Board members, good
17 afternoon. My name is Grace Chan and I'm here today
18 representing both the Los Angeles County Sanitation
19 Districts as well as the Solid Waste Association of North
20 America.

21 And I'd just like to say we agree with Mr. Edgar
22 and Mr. White's comments.

23 Thank you.

24 BOARD CHAIR MOULTON-PATTERSON: Thank you.
25 Chuck Helget.

1 MR. HELGET: Madam Chair and members of the
2 committee, Chuck Helget representing Allied Waste
3 Industries.

4 We support the Board's review of the PEP policy
5 and the need to clarify the parameters for this type of a
6 policy, and have participated in the staff workshops.

7 We support a PEP policy because the policy has
8 provided the Board, LEA's, local governments, and the
9 operators with an effective enforcement procedure for
10 bringing facilities into compliance.

11 Therefore, we urge the Board not to abandon this
12 policy.

13 Your staff has advised you that PEP is not
14 without legal foundation. We believe that the workshops
15 have also shown that there is a need for PEP type policy.

16 The workshops disclose several instances of what
17 has been characterized as PEP policy abuse, but they've
18 also shown many more situations where PEP has been used
19 effectively and safely.

20 We cannot always predict what will happen in the
21 very complex solid waste industry, but we do agree that
22 PEP should not be used to allow facilities to operate
23 without solid waste facility permits for an extended
24 period of time, or at all.

25 But a PEP policy is a necessary enforcement tool

1 for the Board and the LEA's. And we agree that the
2 policy needs to be clarified and should be set forth in
3 regulation with specific criteria that would allow
4 flexibility and yet safeguard the public health, safety,
5 and the environment.

6 We look forward to working with you, Board
7 staff, and other interest groups in developing that
8 policy.

9 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
10 Helget.

11 Kim Thompson.

12 MS. THOMPSON: I just wrote a written --

13 BOARD CHAIR MOULTON-PATTERSON: Oh, you -- okay.
14 Wayne Hunter.

15 Did we get a copy of your written testimony?

16 MS. THOMPSON: No, I just wrote the agenda
17 number on the top.

18 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
19 you.

20 MR. HUNTER: Thank you, Madam Chair, members of
21 the Board. I am Wayne Hunter, president of North Valley
22 Coalition.

23 I respectfully ask that the Board under item
24 three, options for the Board to support the action item
25 number four which reads,

1 "Revocation of PEP and the enforcement
2 action taken against those facilities
3 outside the terms and conditions of their
4 permit," which I guess would be the six that
5 they referred to previously.

6 For the sake of brevity I'd like to submit my
7 full comments in writing, and I'll only review just a few
8 highlights at this time. Unfortunately I have three
9 pages, but I think you've had a long day.

10 The responses of both the industry focus group
11 and the LEA focus group are telling. I refer to the
12 California Integrated Waste Management Board memo from
13 Michael Bledsoe to Kathryn Tobias dated February 13th,
14 2001, in which he stated that under permit violations
15 quote,

16 "Typical examples include exceeding daily
17 tonnage limitations, accepting unpermitted waste
18 streams, exceeding height limits, and disposing
19 of waste outside permitted areas.

20 In that context then, I think their responses
21 and their rationalizations for continuing PEP are
22 apparent.

23 Take, for instance, the industry focus group's
24 response in item 27, attachment six to the question,
25 "What compelling reasons exist for operating outside of a

1 permit's terms and conditions?"

2 Under tonnage growth outpacing permit procedure
3 they state, they have a bullet, "Tonnage increase due to
4 facility closure."

5 You know, facility closure's anticipated, and
6 the operator is required by state to follow through years
7 in advance of closure. Closure of any landfill is well
8 known to all in the waste industry and, indeed, to the
9 LEA's and the various other planning agencies of the
10 municipalities.

11 Obviously there's enough time to request an
12 increase in tonnage at the remaining landfills, and so
13 would allow competitors, agencies, and plants ample time
14 to request the necessary changes via the proper process.

15 There's another bullet in here. "Unforeseen
16 increase in tonnage by a large commercial customer."

17 And I think this statement asks you for the
18 right to accept as much trash as they want when they
19 want. The landfill operator has a permit that states how
20 much they can accept. They're not obligated to accept
21 more.

22 The commercial generator bears the
23 responsibility for securing additional resources for
24 trash disposal if its current collector cannot
25 accommodate him.

1 If the landfill is also the collector and has
2 that responsibility, then it should be up to them to find
3 another landfill. But no way should they be allowed to
4 violate their permitted limits.

5 Again, I continue to address the individual
6 tonnage arguments posed by the industry focus group, but
7 there's, in fact, no compelling reason to deviate from
8 the permit. Any of these bulleted items that they've
9 given you, if you deem them worthy, can be written into a
10 conditional use permit, a mitigated monitoring program,
11 or a solid waste facilities permit.

12 And lastly, I'd just like to address the LEA's
13 focus responses. Again to the question,

14 "What is your level of support for a Board
15 policy that allows facilities to operate outside
16 the terms and conditions of their approved
17 permit?"

18 No surprise here. And again I point you back to
19 your memo. The lead enforcement agency should not be
20 allowed to make the determinations that allow landfills
21 to operate outside the terms and conditions of their
22 permit.

23 Most LEA's have a built-in conflict of interest
24 because they work for entities such as the city or a
25 county that often receive financial benefits from the

1 operation of the landfill, not only in the form of taxes,
2 but tipping fees and favorable rates.

3 Shutting down a landfill for the kind of
4 violations that would be considered Egregious, such as
5 polluted water plumes, broken methane collection systems,
6 dust storms, etcetera, is not in the LEA's interest.

7 In closing, I'd like to point out to you that a
8 recent state audit indicates that there's close to fifty
9 years of landfill capacity in the state. You know, it's
10 a landfill glut.

11 Now is the time to fix the problem with
12 landfills, revoke the PEP.

13 Thank you.

14 BOARD CHAIR MOULTON-PATTERSON: Thank you very
15 much.

16 Mary Edwards.

17 MS. EDWARDS: I'm Mary Edwards, and I represent
18 the North Valley Coalition and the Women's Club.

19 I really appreciate your coming down here to be
20 in Southern California because there is a great deal of
21 interest in the environmental community down here about
22 landfills. Unfortunately, some of us know too intimately
23 the problems that they can cause.

24 In your staff's discussion of the permit
25 enforcement policy, it recalls how this policy was put in

1 place to bring compliance to facilities whose permit
2 conditions and operations were so loosely regulated that
3 they seemed meaningless. And it cites typical examples
4 that include exceeding daily tonnage, unpermitted waste
5 streams, height limits, disposal outside the permitted
6 area.

7 This is a history that our community has lived
8 with. At landfill at Sunshine Canyon where I live was
9 permitted to legalize the dumping that was place, taking
10 place in a convenient canyon close by. It was a small
11 operation separated by a ridge land, the ridge line of
12 the Santa Susanna's from the growing residential
13 community, people who bought homes unaware of its
14 existence.

15 But when Ronnie Ferris took it over in '78,
16 things began to change rapidly. Trash started arriving
17 from distant municipalities, and the operating permit,
18 which thought they were going to be taking in 3,000 cubic
19 yards a day, was ignored. And by the mid-eighties they
20 were taking ten times that much, 30,000 tons a day by
21 their own estimate. Of course, that was only an estimate
22 because there weren't any scales.

23 The hours of operation on the permit were
24 meaningless, and the boundaries were exceeded, and they
25 destroyed a forest. And the heighth limitation was

1 exceeded. And we certainly saw it coming all over the
2 ridge lines.

3 And in human terms, this is what I really wanted
4 to talk about. In human terms, these kinds of increases
5 in tonnage have really, consequences. They can really
6 devastate a neighborhood. In our case the canyon winds
7 blew and the skies turn brown with dust, and the dust
8 storms in the hills made me thing sometimes that they are
9 on fire, and the we call the fire department.

10 Our children went to bed coughing, and we were
11 really concerned about the PM 10's that all the dust
12 brought. On the warm summer nights you made excuses to
13 your guests for the noxious odors, and you closed all the
14 windows, knowing that the gases that you smelled
15 contained such uncomfortable things as benzenes and vinyl
16 chloride and other carcinogens. You were worried.

17 Our complaints were dutifully recorded. We
18 didn't always know where to call. We called usually the
19 local Councilman, but nothing changed, and no one ever
20 seemed to have the power to enforce anything.

21 And all we heard was trash prices, or there'll
22 be trash in your streets. And this became the mantra for
23 these violations.

24 There's simply not enough time today to recount
25 the violations and frustration our community has felt, as

1 they have seen and continue to see protraction of
2 violations and no accountability.

3 The county landfill is now amassing a dismal
4 record of violations. The operators and LEA's opine that
5 they need flexibility. We believe they need
6 accountability. When operators are allowed to ignore the
7 conditions of their permit, it translates, this
8 translates into disaster for the adjacent neighborhoods.

9 Communities have worked, and we all worked
10 diligently through the EIR process to establish
11 conditions and mitigations that we believed would protect
12 us.

13 And then it is devastating to learn that the
14 enforcement of these conditions can be protracted forever
15 or changed at the convenience of the operator with only
16 the agreement of sometimes a malleable LEA.

17 The EIR analysis of these impacts from trucks
18 and other pollution sources were quantified and based on
19 daily intake. These are hard numbers. They become
20 meaningless if you continue to just allow overages of
21 tonnage. It, it makes the EIR process and all the work
22 that we've done for mitigation a mockery.

23 You know, we've heard today about a holistic
24 approach. Well I think if we're really looking at a
25 holistic approach, we're going to look at the healing and

1 care that we have for these communities.

2 We urge you to hear from those who live beneath
3 the landfills, and whose health and quality of life is in
4 your hands.

5 The PEP policy was written with such large
6 loopholes that trash trucks can be driven through them
7 without even downshifting.

8 Please abandon the PEP policy as the state
9 auditor's recommended. And please work hard to enforce
10 those important, important conditions.

11 Thank you.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mrs.
13 Edwards.

14 Ralph Kroy.

15 MR. KROY: Madam Chairman, Board members, my
16 name is Ralph Kroy, I'm with the North Valley Coalition.

17 Briefly the position I would like to extend
18 would be to revoke PEP and take enforcement action
19 against the facilities operating outside the terms and
20 conditions of the permit.

21 That would be position number six or four on the
22 older list that I looked at.

23 BOARD MEMBER PAPARIAN: Could you pull your
24 microphone closer? We're having trouble hearing you.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you.

1 MR. KROY: Is that better?

2 BOARD CHAIR MOULTON-PATTERSON: Much, thank you.

3 MR. KROY: Shall I start over?

4 BOARD CHAIR MOULTON-PATTERSON: I think you can
5 continue.

6 MR. KROY: Okay. The position that I would
7 stand for would be to revoke PEP and take enforcement
8 action against those facilities operating outside the
9 terms and conditions of their permit.

10 The observation that we have and is also noted
11 in the audit, would be operators seem to ignore the
12 citations. Operators seem to operate in a manner,
13 whatever they had, until cited, and then act to correct
14 while still operating.

15 We need to obtain compliance with the terms of
16 the operating permit, where at public and Board meetings
17 to modify the permits for public agenda.

18 The time for compliance for PEP was, as I
19 understand it, August, 1992 unless otherwise provided
20 for. Therefore, knowing that, our position would
21 strongly be to revoke and take enforcement action as
22 necessary.

23 Thank you.

24 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
25 Kroy.

1 Nicole Brown.

2 UNIDENTIFIED SPEAKER: She left.

3 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
4 you.

5 Esther Simmons.

6 MS. SIMMONS: Good afternoon, Madam Chair, Board
7 members.

8 The permit enforcement policy has created a
9 giant black hole. Violations of terms and conditions by
10 landfill operators disappear until which time the
11 landfill closes or the operators find it necessary to
12 finally take the laborious and time consuming efforts to
13 revise their permits. Even then the revisions are only
14 violations turned good on paper.

15 It is time to give the PEP a well earned rest.
16 The time is right for you to make changes. The state
17 audit urges you, the Integrated Waste Management Act
18 under the Public Resources Code give you the tools and
19 the public supports enforcement.

20 The terms and conditions of the permitting
21 documents are no longer merely descriptive, but they
22 define operating procedures that, when violated, should
23 put in motion certain consequences and penalties.

24 The PEP puts these consequences on hold and
25 allows the operators an unlimited time to continue

1 violating, thus turning undesirable effects and impacts
2 against everything the permits are meant to protect.

3 A Board policy allowing facilities to operate
4 outside the terms and conditions of their approved permit
5 with compelling reasons and without repercussion should
6 not be entertained.

7 The only compelling reason without repercussions
8 should be a declared emergency with the explicit
9 determination made by the governing bodies of the
10 jurisdiction.

11 All other consideration should have been
12 addressed at the time that the terms and conditions were
13 being evaluated and assessed and assumed prior to active
14 operations.

15 That is the beauty of the conditional use and
16 the solid waste facilities permits. They allow for an
17 open and clear discussion with all the entities involved
18 in permitting the landfill.

19 The discussions should also include
20 representatives of the community that will be affected.
21 They too are an entity. They will be the recipients of
22 any and all of the impacts.

23 Terms and conditions should be set forth with
24 considerations of tonnage increase, opportunities for
25 improvement, program changes in service area,

1 incorporation of changes in laws, regulations, or
2 technology.

3 The operator must be held responsible for
4 knowing intimately the terms and conditions of its
5 contract. If there is a change in ownership, it should
6 be assumed that the new owner operator has extensive
7 experience and knowledge about landfilling, or he has
8 armed himself with a consultant who knows the operations
9 of the landfill like the back of his hand.

10 Good faith efforts cannot be accepted blindly.
11 Good faith efforts are an excuse for the violations of a
12 landfill inappropriately sited.

13 The Board has the opportunity to make changes of
14 significant value to health, safety, and environment.
15 The PEP handcuffs the LEA's and allows the absolution of
16 a violation without penance.

17 Although the Board does not have the authority
18 in siting a landfill, it does have the authority to deny
19 permits to violators of substance.

20 The Board is wrong in continuing to support
21 policies that do not deny approval to long-term violators
22 of state minimum standards and permits. Legislation
23 needs to be implemented that gives the Board
24 authorization to deny a permit, if the Board determines
25 the findings to be deficient or wrong.

1 The Board, not being beneficiary of any
2 financial benefit from the operation, should also be free
3 of conflict in their decision.

4 With your current policies in place and lack of
5 authority in denying permits, long-term violators will
6 continue to blatantly disregard the law, laugh at the
7 agencies, and disrespect the people. It's a pathetic
8 situation where even state minimum requirements are not
9 met.

10 Rules and regulations are confounding,
11 particularly when they are inconsistent and conflicting.
12 One of the solutions is to create a governing document
13 that will incorporate the state minimum standards and be
14 site specific.

15 The most stringent of regulations should be
16 adopted to protect the area and the surrounding
17 communities. The language should be direct and leave
18 little room for interpretation.

19 If the document is handled correctly, it will
20 also incorporate the flexibility that the particular
21 landfill requires so that violations will be scarce.

22 Last, but most important, it is time to accept
23 that landfills do not belong with a minimum of a five
24 mile radius of a residential community. Landfills smell,
25 pollute, and create sordid conditions. In some cases the

1 problems are exacerbated by the inappropriate placement
2 of a landfill.

3 It's impossible for an operator to comply with
4 the terms and conditions if nature is not going to
5 cooperate. This circumstance cannot be changed. If
6 there's insistence on placing this landfill in what has
7 been deemed an inappropriate area, then the operator
8 should be warned that laws and regulations will be
9 enforced with the power of monetary and civil penalties.
10 This should not be a threat but a promise.

11 Thank you for the opportunity to address you.
12 My hope is that you will make changes to enforce the laws
13 already present by revoking PEP, and create legislation
14 to enhance your authority.

15 And I'd also like to say that the coalition
16 would be ready to handle a workshop, if you like, on the
17 environmental issues.

18 Thank you very much.

19 BOARD MEMBER ROBERTI: Madam Chair.

20 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
21 Simmons.

22 Senator Roberti.

23 BOARD MEMBER ROBERTI: Yeah, I, this is just an
24 observation. I appreciate what the speaker and the prior
25 speakers have said. And we're trying to craft a

1 resolution on the PEP policy that will meet many of the
2 concerns. And hopefully the day will come when we do not
3 locate these things in urban areas.

4 But I think every time those suggestions are
5 made someone's got to speak also to the alternative.

6 I myself live in the Los Feliz area of Los
7 Angeles where for forty years we had a landfill in Toland
8 Canyon. And I understand and appreciate what you've been
9 doing because I've circulated petitions to stop the
10 further landfill there.

11 But since I've been on the Board I traveled to
12 Puente Hills, and the people who live off the Pomona
13 freeway where traffic would have to take place where you
14 transport this stuff, are going to be faced with a
15 terrible environmental justice problem.

16 These people already live on trash artery number
17 one, and if we start transporting this stuff off the
18 Pomona freeway or the San Bernardino freeway or the Santa
19 Monica freeway, they're just going to be, they're going
20 to be hosts to even more trash than they've ever had
21 flying off the trucks.

22 So I don't know what the answer is. Certainly
23 violations have to be dealt with. Certainly this Board
24 must not be lenient when there are violations. And I
25 think the fact that the North Valley Coalition has

1 accented this to us is very, very important.

2 But when we talk about no landfills and the
3 transportation of trash, that is, that's a tough, that's
4 a tough one without an alternative.

5 And I know exactly where you're coming from
6 because, as I said, I myself was busy circulating
7 petitions against Toland two. We already had Toland
8 one. But it's very, very difficult. The alternative
9 always has to be spoken too.

10 BOARD CHAIR MOULTON-PATTERSON: Thank you,
11 Senator Roberti.

12 Petty Henshaw, LEA from Orange County.

13 MS. HENSHAW: Hello, Patty Henshaw with Orange
14 County also representing CCDH today. I'm also part of
15 the work group that worked on evaluating the PEP policy.

16 I think you received our March 16th letter. And
17 basically overall the PEP was intended to change the
18 mindset of how permits are written, and it was
19 successful. And I think for the most part PEP is not
20 needed anymore because it's been superceded by your
21 February policy of 1997 and the advisory number 38, and
22 also with the pending Title 14 regulations.

23 With that, we understand the Board's concern
24 that sometimes notice and orders may be, essentially
25 become temporary permits because of difficult situations.

1 I think the data shows that the LEA's are doing
2 a great job in enforcement. Landfills out there for the
3 most part are in compliance. It's been effective, but we
4 also agree there's always need to finetune the system,
5 look at the system, see where the pitfalls are, and what
6 needs to be done to close up additional issues.

7 The suggestion is for us to look closer at that
8 policy of 1997, advisory 38, Title 14, kind of look at it
9 in the big picture, what is working, what needs to be
10 finetuned. And with that, we also want to say that we
11 agree that at the end of enforcement we don't have very
12 much power. Our civil, administrative civil penalties
13 maximize 15,000 a year. That's, That's nothing.

14 Also, just for you to know, if the Board chooses
15 to require the LEA's to issue cease and desist, all an
16 operator has to do is appeal to the hearing panel and it
17 stays the cease and desist. You basically essentially
18 take away any power from the LEA to try to get to
19 compliance, because now the notice and order is stayed
20 while they go through the appeal process.

21 So there are some problems with enforcement. So
22 we're asking for this Board's support, legislation that
23 will increase the civil penalties, we need a bigger
24 hammer at the end. Also to look at that, the ability for
25 an operator to stay a cease and desist. Because when we

1 issue a cease and desist we're serious, and we don't like
2 the idea it can be temporarily stayed while it goes
3 through two processes, the local hearing panel and the
4 Board.

5 So we do need some hammers at the end. But
6 overall I think the data shows that enforcement has
7 worked. The PEP policy served its purpose. We have good
8 permits out there now that really clearly spell out the
9 terms and conditions. We agree there may be times when
10 it's been used a little too freely, but for various
11 reasons, but let's look at them. What are the reasons?
12 What are some of the solutions.

13 Maybe the LEA's are just using the tool that's
14 available to them and there's other tools that can come
15 about.

16 So we just think it needs to be looked at as
17 part of a bigger picture. With that, any questions?

18 BOARD MEMBER PAPARIAN: Madam Chair.

19 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

20 BOARD MEMBER PAPARIAN: I do have a question.
21 You suggested that the \$15,000 cap we should somehow seek
22 to increase that. Have you had situations where you were
23 fining somebody and you wish you had the ability to fine
24 more? Can you give us an example of the types of things
25 where you would like to have --

1 MS. HENSHAW: Actually that's a good question,
2 and actually that was asked at one time. And to tell you
3 the truth, because LEA's know that it's an ineffective
4 tool, you couldn't even go to your district attorney and
5 ask them to file a case, or you couldn't -- not that
6 civil penalties have to go to the district attorney.

7 But it's so ineffective that you try not to have
8 to even get to that point. That's where these kind of
9 notice and orders come into place, because you're using
10 other tools to get to your means because you already know
11 15,000 is not going to impact anybody. It's not even
12 worth the energy for an LEA to spend their time to look
13 into it. It's too expensive. It's too expensive to try
14 to get that \$15,000.

15 And it really, for most operators \$15,000
16 maximum a year, we charge, our fees are higher than that
17 for our annual fees. So, I mean it just doesn't have the
18 impact. So we're not even looking at it as an option
19 because it's not worth the bother.

20 BOARD MEMBER PAPARIAN: Okay.

21 BOARD MEMBER JONES: Madam Chair.

22 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

23 BOARD MEMBER JONES: Follow-up questions on
24 that. The 15,000 is, three can be issued, three times,
25 but it's for the same violation.

1 MS. HENSHAW: Actually I think 15,000 is the
2 maximum.

3 BOARD MEMBER JONES: It is, but it's per
4 violation. If you have, it's not per entity. If you've
5 got a litter issue, if you've got a tonnage issue, as I
6 remember the discussions from when that bill was going
7 through, that's one of the things that was discussed that
8 it was per violation.

9 So if we have this rampant non-compliance then,
10 and it's continuing to reoccur, and we're writing, LEA's
11 are writing people up for two or three things, I think
12 that they, I think you have a little more juice there
13 than you think.

14 MS. HENSHAW: Yeah, that's true. If the
15 violation was only for tonnage though that would just be
16 one.

17 BOARD CHAIR MOULTON-PATTERSON: Just for, I need
18 a clarification, Mr. Jones and our staff. It says
19 \$15,000 limit per facility per calendar year.

20 BOARD MEMBER JONES: Per violation though,
21 right? I think it's per violation.

22 MS. HENSHAW: There's a \$10,000.

23 BOARD MEMBER JONES: You could do 10,000 at the
24 first one, right.

25 MS. HENSHAW: But it's a different kind of

1 enforcement.

2 BOARD CHAIR MOULTON-PATTERSON: It's not total.

3 BOARD MEMBER JONES: It may be total. I had
4 understood that it could be different issues.

5 MS. HENSHAW: Yeah, and from my understanding
6 it's fifteen total for a civil penalty. And the thing is
7 that regional boards and the AQMD, their fines are
8 significantly more. I mean you can actually make a
9 significant impact, even just the threat of it that we
10 can issue, you know, a huge amount will make an operator
11 look a little more seriously at what the LEA is trying to
12 tell them to do.

13 BOARD MEMBER JONES: As the LEA in Orange
14 County, how many facilities do you have that you think
15 that you need that tool for, or how many of them are in
16 compliance?

17 MS. HENSHAW: Orange County?

18 BOARD MEMBER JONES: You're the LEA from Orange
19 County.

20 MS. HENSHAW: Yeah, in Orange County all the
21 notice and orders are on closed landfills, they're well
22 run landfills, and we haven't issued any kind of notice
23 and order for permit terms and conditions since they
24 updated them all.

25 So we haven't needed the need for that. But

1 also, Orange County works very hard to make sure that
2 they don't get into a situation where they would require
3 us to give them a notice and order.

4 BOARD MEMBER JONES: And I think that's what I
5 wanted to hear, because it always strikes me as
6 interesting when we talk about the need for big fines
7 when in, if you look at the chronic violators in the
8 State of California, we've gone from 47 to 17. So I
9 think our programs are probably working.

10 I think the LEA's are probably doing their job,
11 as well as the operators, otherwise the chronic violator
12 list would still be up at 47 or 50.

13 MS. HENSHAW: Yeah, I think the data shows that
14 enforcement is working, and the work that the Board staff
15 does with the LEA's, we've gone a long ways since 1990.
16 And the landfills were run very well and the transfer
17 stations are run very well, and the LEA's are writing
18 really good permits and enforcement, and it's getting
19 action.

20 But there's a lot of ways to get to that
21 enforcement. And with Orange County, just the image of
22 getting the notice and order is not a positive thing so
23 they work very hard not to get violations, not to get
24 notice and orders.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.

1 Henshaw.

2 We're going to be taking a ten minute break
3 right now. But I did want to ask our staff if we could
4 continue item 29 on environmental justice because of our
5 time constraints today. I'd like to let the audience
6 know if we're going to do that.

7 We do have quite a few more speakers on this,
8 but we need to take a short break.

9 BOARD MEMBER EATON: Madam Chair, may I just
10 make one comment to the North Valley Coalition? During
11 the break perhaps, Mr. Mike Mohajer is in the back, I
12 don't know if you know, but on April 24th they're going
13 to be having a hearing regarding the county and how they
14 move waste around. And obviously Sunshine Canyon is in
15 the city and the county, and perhaps you can talk to him
16 and get on their mailing list, because they are going to
17 be deciding some big issues of how they move trash in and
18 around the county, whether it's exclusive or not. So
19 maybe you can get on his mailing list.

20 He singlehandedly controls a task force that has
21 great power and great authority, and I think it's
22 important that you talk to him.

23 It sure would help us out. Thank you.

24 BOARD CHAIR MOULTON-PATTERSON: Thanks, Mr.
25 Eaton.

1 Ms. Bruce, so we can continue, we will be
2 continuing item 29 on environmental justice till our
3 April meeting so that we can give it the time that it's
4 due.

5 INTERIM EXECUTIVE DIRECTOR BRUCE: Thank you.

6 BOARD CHAIR MOULTON-PATTERSON: And we'll take a
7 ten minute break right now.

8 (Thereupon there was a brief recess.)

9 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.
10 Eaton, ex-parte.

11 BOARD MEMBER EATON: I said a quick hello to
12 Mike Mohajer and also Kelly Astor.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you.
14 Mr. Jones.

15 BOARD MEMBER JONES: Grace Chan, Mike Mohajer --
16 and not Mike Mohajer, sorry, Mike. Kelly Astor and Chuck
17 Helget.

18 BOARD CHAIR MOULTON-PATTERSON: Thank you.
19 Mr. Medina.

20 BOARD MEMBER MEDINA: None to report.

21 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

22 BOARD MEMBER PAPARIAN: Yeah. A brief
23 conversation with Wayne Hunter of the North Valley
24 Coalition as well as helping introduce Mike Mohajer to
25 representatives of the North Valley Coalition.

1 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
2 you.

3 Senator Roberti.

4 BOARD MEMBER ROBERTI: No ex-partes.

5 BOARD CHAIR MOULTON-PATTERSON: And I have
6 none. Okay.

7 Our next speaker, again we're on item number 27
8 and our next speaker is Kelly Smith.

9 MR. SMITH: Thank you, Chairwoman, Board
10 members. I did want to thank staff -- Kelly Smith for
11 the North Valley Coalition.

12 I did want to thank your staff efforts for the
13 workshops that you had and so forth. I do think it was
14 productive as far as producing plenty of different
15 options and alternatives and different things that you
16 could work with, recognizing that the attendance was
17 heavily skewed to industry.

18 It was also beneficial, I think, in terms of
19 getting some of the information about what the heck this
20 policy is, this permitting and enforcement policy.

21 And after, after going through that experience,
22 I'm still confused about what the heck it is. I don't
23 know if you really understand. There are a lot of laws
24 already in place as these other directives to the LEA's
25 and so forth. And I think the reason you have this in

1 front of you is because there's some problems with
2 whatever that policy is.

3 And if we go back and we look at what
4 information we know about, it was passed in 1990, I think
5 you have a chart in front of you that shows in the
6 mid-nineties it was used extensively.

7 And you also were able to see that most of the
8 violations were for exceeding the daily permitted
9 tonnages. And that's, that's more than a small matter at
10 any facility.

11 The amount of trucks going into a facility, the
12 amount of waste, the amount of activities, the hours you
13 have to be open to accommodate those vehicles, all those
14 kinds of things are important impacts.

15 And as I remember it, this policy was really
16 used extensively during the mid-nineties because the
17 Board was sued by the National Resources Defense Council
18 for failing to police the permits, and the fact that
19 there were so many permits out there that were grossly
20 exceeding the terms of those permits.

21 So you had many landfills where the permits were
22 meaningless pieces of paper that were operated illegally
23 in many ways.

24 And this policy was put in place, as I
25 understand it, as a short-term, intermediary kind of fix,

1 recognizing the fact that this was the state of things,
2 and here LEA's is some instruction on how to deal with
3 that, notice and orders, get 'em back in line, clean up
4 your enforcement policies and your policing, and get this
5 fixed. And I think as the, some of the LEA
6 representatives have said, maybe it worked, maybe it
7 worked quite well.

8 And so that in the recent years we have very few
9 examples of the policy even being used, which naturally
10 leads to the question then why are we here?

11 And I think, I think that we're here today
12 because if you fail to send a message to the LEA's that
13 this policy is not a regular course of business, that
14 this is not something that should be perceived as
15 standard procedure, that you run the risk of returning
16 again to those days in the mid-nineties when you had so
17 many permits out of violation that something had to be
18 done, you were in this situation.

19 The problems I think are pretty obvious, and
20 some of them derive, I think, from the fact that you're
21 abrogating a lot of your responsibilities to the LEA.
22 And there's a problem there that's been pointed out by
23 the auditor, and I think by your, just practical
24 consideration.

25 This can lead to circumventing CEQA, that's a

1 big problem. A lot of these impacts are significant and
2 should be reviewed by an environmental document.

3 The, some of the other criteria or
4 considerations that get ignored are alternatives. And
5 when the landfill wants to take in a bunch more waste,
6 are they really looking at perhaps reducing that waste
7 stream, or are we just encouraging them to landfill at
8 the same time.

9 And the real heart of the problem seems to be
10 the open-ended use of the notice and orders without
11 penalties.

12 I would recommend today that the most
13 responsible course of action would be to send a directive
14 to the LEA's with what they should be doing. And I would
15 leave that in your very competent hands. But it should
16 clarify what they should be doing in circumstances where
17 a landfill is in violation of their permit.

18 And I would encourage you that in that directive
19 that you be able to maintain some oversight as that kicks
20 into effect. That you be able to review instances where
21 a landfill says we really have to give a lengthy notice
22 and order, or it's been going on so long, or a time
23 trigger, something to that effect, that that would be
24 practical and that would be useful.

25 So the bottom line, I would recommend that you

1 revoke PEP and perhaps give a directive to the LEA's on
2 how they should be enforcing permit conditions. It might
3 be a good time to do it because of all these other things
4 that are going on. And I think that the LEA's are going
5 to have a lot on their plate, but this is fairly
6 fundamental and should happen soon.

7 So I'd encourage you to do that. Okay. Thank
8 you.

9 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
10 Smith.

11 Ann Ziliak.

12 MS. ZILIAK: Hi. My name is Ann Ziliak. I
13 wanted to tell you I agree with the staff's response to
14 eliminate the PEP -- ooh, scary.

15 When policies are made, people are the ones that
16 suffer. And where landfills are concerned, the people
17 that live near them are the ones that suffer the most.
18 And I live in a neighborhood in L.A. County -- Oh, I'm
19 sorry, I'll move it up.

20 BOARD CHAIR MOULTON-PATTERSON: You have to get
21 it pretty close to you.

22 MS. ZILIAK: Oh, that's scary. It's too big.

23 I live in an area of L.A. County, really it's
24 L.A. city though, that is near the Sunshine Canyon
25 landfill in a neighborhood that was the first development

1 in the San Fernando Valley that allowed minorities to
2 purchase homes there. And this was the reason why my
3 family moved there, and everybody wanted home ownership.

4 When I moved there Sunshine Canyon was a compost
5 type area, and it was illegal, and they eventually gave
6 it a permit.

7 But now it's, it may become one of the biggest
8 dumps in the United States. And I find it incredibly
9 ironic that in an area that would, that originally many
10 minorities move to, ended up now becoming maybe one of
11 the largest dumps in the United States. It's very
12 ironic.

13 People in our community, they work long hours
14 and they have little time to spend attending meetings
15 like this or traveling to Sacramento as some of us have
16 done. And I find myself fortunate that I'm able to do
17 that. But they depend on people like myself and the
18 enforcement agencies to enforce the laws. And they
19 really trust them to do that.

20 And what it really comes down to is the people.
21 And allowing landfills to operate when they violated a
22 permit requirement is unfair to people that live near
23 them. They put their trust in the LEA's and Boards like
24 you to make policies that will keep our health and safety
25 in mind.

1 In response to Mr. Paparian's comment about
2 environmental groups for your focus group there, in 1990
3 I was one of many people within the North Valley
4 Coalition that helped to fund our, fund and found a group
5 called LASER, called Landfills Alternatives Save
6 Environmental Resources. And this group included members
7 from all over Southern California that lived near
8 landfills, including Puente Hills landfill. And I'm sure
9 that if they had been asked to become part of the focus
10 group, I think many of them would have had much, much
11 good information to give you.

12 I realize that every policy that you set needs
13 to be enforced, and with the goal of protecting the
14 health and safety of people. And it should not matter
15 what economic status they have or ethnic background they
16 have, it should be for everybody. They should come first
17 and foremost when the LEA's make these permits and in
18 their enforcement.

19 It shouldn't have to do with a conflict of
20 interest, as someone had said, because some of them work
21 for the county and because the county gets money they
22 may, you know, not cite them for accepting too much waste
23 because they get tipping funds.

24 But they depend on people like yourselves to
25 keep them safe, and to make landfill operators follow

1 laws that will ensure this.

2 Thank you.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you.

4 Frank Kortum.

5 MR. KORTUM: My name is Frank Kortum. I want to
6 thank you for holding your meeting here in Los Angeles
7 and making it easier for us to attend.

8 But I also want to share Member Paparian's
9 frustration that there was no outreach to the
10 environmental community on this issue, no focus group for
11 the environmental community. I'm also a member of LASER
12 that Ms. Ziliak referred to, and a member of the Sierra
13 Club, and I'm pretty sure that if staff had contacted
14 either of those organizations I would have found out
15 about it as somebody who's interested in that issue. So
16 this inadequate outreach to the environmental community
17 tends to create a impression of industry bias that you
18 can correct by eliminating the PEP policy.

19 Specifically, we support option six because PEP
20 has far outlived any usefulness it may have had.
21 Particularly the operator of the Sunshine Canyon landfill
22 has been a major abuser of this policy.

23 This landfill was sold to the city and county as
24 a state of the art landfill, but it's now clear that the
25 landfill operator is literally getting away with murder

1 with the violations that are going on out there. And your
2 agency is handcuffed in terms of any meaningful
3 enforcement.

4 Now in response to Senator Roberti's comments
5 about alternatives. The North Valley Coalition is
6 working with the city in creating a meaningful
7 alternative to the present emphasis on disposal of trash
8 in landfills. Specifically we allocate the increased use
9 of MRF's as a way to get trash, more trash trucks off the
10 road, to reduce the waste stream closer to the source.

11 And we have specific written proposals on that
12 issue that we'd be happy to provide to the Board and the
13 staff and discuss further with you at your convenience.

14 Thank you.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you very
16 much. Mike -- and I'm going to try it again -- Mike
17 Schmaeling. Did I do better or not? One more time for
18 me.

19 MR. SCHMAELING: I hope to see you so much more
20 so that we can work on that. Yeah, Mike Schmaeling with
21 Santa Barbara Environmental Health, and Chair of the EAC.

22 I'm currently reading a book right now, it's
23 called, "Betrayal of Trust." It's by Laura Garrett.
24 It's a big thick thing. It's on different public health
25 disasters that have occurred. And I know this is quite,

1 sounds like quite a bit off from PEP, but I'll bring it
2 back to it in a minute.

3 In India in 1995 they had some problems, some
4 bad decisions made by the government, and consequently a
5 lot of waste was left on the streets. And that waste
6 left on the streets caused rat breeding, vector problems,
7 consequently they had an outbreak of plague. They got it
8 fairly well contained, by the grace of God it didn't
9 spread all over and have the impacts that it could have
10 had.

11 Now to bring that back to PEP. Back in 1990
12 when we started working on trying to get these permits
13 updated and correct, we discovered that, you know, that
14 we've got a lot of these things that have got to be
15 updated really fast.

16 If you look at the graph that your staff put
17 together showing what had happened. You look at 1995 and
18 you'll see that there are almost forty notice and orders
19 issued.

20 And then you look down at the year 2000 and you
21 see that only nine were issued. That tells me a lot of
22 things.

23 One, we were successful in doing two things:

24 One, we've got these facilities into compliance,
25 and at the time we prevented a lot of waste from building

1 up in places where it shouldn't have been.

2 The PEP was an important policy that allowed us
3 the opportunity over a period, maybe a little longer than
4 we would have liked, but over a period of time to get
5 these facilities into compliance and operating the way
6 that they're supposed to.

7 There are still, I understand, a couple of
8 places out there, and I was glad to hear that action is
9 being taken to be sure that these are remedied real
10 quickly.

11 So with the applause or whatever you want to
12 call it for PEP, maybe now is the time to put it to rest.
13 The LEA's Solid Waste Policy Committee of CCDH feel that,
14 you know, it's served its time.

15 We have another policy in effect, that's LEA
16 advisory number 38. It gives some very specific
17 guidelines for how we should proceed. And also I'd like
18 to offer the EAC's assistance in developing notice and
19 order criteria for where facilities may still fall out.
20 This is to address industry's interest, where if a
21 facility is out of compliance, a notice and order can
22 help bring them into compliance on a very tight
23 compliance schedule.

24 And then if LEA advisory number 38 needs to be
25 revised or updated, we're here to help.

1 Thank you very much.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you. That
3 was our last speaker and I'll turn it --

4 MR. DE BIE: Madam Chair.

5 BOARD CHAIR MOULTON-PATTERSON: Mr. De Bie.

6 MR. DE BIE: A number of speakers have referred
7 to information about a number of notice and orders over
8 time, and that is in your packet on attachment two is a
9 bar chart that indicates the trend of numbers of notice
10 and orders relative to the, that were issued for terms
11 and conditions for significant change.

12 So again, a number of speakers have been
13 referring to a high amount of orders in the mid-nineties
14 and then trailing off, and that's what they're basing
15 that information is on attachment two.

16 So I just wanted to bring that to the Board
17 members' attention.

18 BOARD CHAIR MOULTON-PATTERSON: Thank you, I
19 found it, attachment two. Thank you, Mr. De Bie.

20 Okay. I'll turn it back over to the Board for
21 comments, questions?

22 BOARD MEMBER EATON: I have a couple of
23 questions --

24 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton.

25 BOARD MEMBER EATON: -- of staff. In preparing

1 this item and perhaps legal can help me, and perhaps Mr.
2 De Bie and Ms. Nauman.

3 My understanding was that when PEP was
4 originally put together it dealt with the terms and
5 conditions rather than violating state minimum standards,
6 is that a fair statement? That the terms and conditions
7 are different than the violations of state minimum
8 standards?

9 MR. DE BIE: Yes.

10 CHIEF LEGAL COUNSEL TOBIAS: That's accurate.

11 BOARD MEMBER EATON: In either of your research
12 in preparing the item, did you find situations wherein
13 the state minimum standards were exceeded by using PEP in
14 violation of the policy?

15 MR. DE BIE: If I could put it in other words,
16 did we come across situations where notice and orders
17 were written that would allow a facility to continue to
18 violate a state minimum standard, be placed on a
19 compliance schedule with an anticipation that they'll
20 come into compliance sometime following that schedule?

21 I mean that's basically what's happening with
22 the terms and conditions. If that's what you're asking,
23 yes, in terms of the long-term violations which are the
24 gas violations predominantly.

25 But in the most part, first of all, very few

1 notice and orders are written for state minimum standard
2 violations, because they're corrected within a day or a
3 week or at the most a month.

4 In some situations where it's a chronic
5 situation, mostly gas, they end up on the inventory, and
6 we have seventeen of those facilities which would be, you
7 know, the current list of facilities that have state
8 minimum standards. Most of those, if not all of those
9 have a notice and order that require them to come into
10 compliance. And then for the ones with gas, it is a
11 lengthy compliance schedule because, again, of the issues
12 relative to remediating a gas problem at a facility.

13 BOARD MEMBER EATON: And I asked the question in
14 my own mind because I read through all the material, and
15 I notice back in 1990 or 1992 the policy statements
16 within PEP, which basically dealt with terms and
17 conditions, not the violation of state minimum standards.

18 MR. DE BIE: Yes.

19 BOARD MEMBER EATON: And to me that is
20 segregated out. That if there is a situation wherein the
21 violation of state minimum standards took place, then the
22 PEP policy really isn't the appropriate tool. It's
23 really whether or not we as an organization went to the
24 LEA and said what are you doing here rather than
25 attacking a policy.

1 MR. DE BIE: Yeah, PEP only --

2 BOARD MEMBER EATON: It's a separate issue as to
3 whether or not the policy itself needs to be modernized,
4 updated or whatever, I haven't gotten to that yet. But
5 I'm very much interested because that seems to be the
6 crux of it, and what I'm trying to do, and I'm a late
7 bloomer so sometimes the light doesn't go on real quick,
8 but separating terms and conditions, we mix and match
9 them from state minimum standards.

10 And when I went back to the audits report, I'm
11 looking to see what state minimum standards were
12 violated, because those aren't based on PEP, that's based
13 on, and your research and your analysis didn't really
14 kind of lay that out. I went back to the original
15 policy. So I'm trying to state a continual precedence as
16 to what consistency is. So I'm just trying to figure
17 out.

18 Were you able to find any of that? Mr. Bledsoe,
19 any -- because you say it's contrary to public policy,
20 but I'm looking at violations of state minimum standards
21 which, as I understand, because the original policy
22 talked about the fact that:

23 One, this policy applies to violations of permit
24 terms and conditions, not to general and specific
25 violations of state minimum standards for the operation

1 of solid waste facilities.

2 That tells me that there's a different
3 enforcement mechanism that must take place if you violate
4 state minimum standards.

5 So if you have LEA's using PEP, then yes, I'm
6 very much opposed to that. So that's what I'm trying to
7 get at. So when I see your legal memorandum, I'm trying
8 to distinguish what situations those arise in.

9 MR. BLEDSOE: Yeah, PEP explicitly applies only
10 to terms and conditions of solid waste facilities
11 permits.

12 BOARD MEMBER EATON: And is there an exhaustive
13 list of that, and is that just kind of -- I mean I really
14 don't know. I mean I've tried to make my own list
15 because that would be helpful, and maybe some of those
16 terms and conditions are situations that maybe should not
17 be part of the policy.

18 MR. BLEDSOE: Right. Those are --

19 BOARD MEMBER EATON: If there is a policy.

20 MR. BLEDSOE: Those are terms and conditions
21 imposed by the local enforcement agency in connection
22 with the solid waste facilities permit.

23 So if an LEA were applying PEP to allow a
24 relaxation of a state minimum standard, I mean that's
25 wholly a separate issue. I mean PEP does not relate to

1 violations of state minimum standards on its face.

2 BOARD MEMBER EATON: But that's --

3 MR. DE BIE: We have no data to indicate that
4 any LEA is trying to apply a PEP philosophy or mechanism
5 to state minimum standards.

6 BOARD MEMBER EATON: But the audit report talked
7 in terms of violating state minimum standards of PEP, did
8 it not?

9 MR. DE BIE: The audit report talked about PEP
10 relative to terms and conditions, allowing changes to
11 occur at a facility without the permit being revised.

12 BOARD MEMBER EATON: Okay.

13 MR. DE BIE: It also did speak to enforcement,
14 general enforcement at the facilities, enforcement orders
15 and compliance deadlines coming and going so, but they
16 didn't connect the two in the audit.

17 BOARD MEMBER EATON: Okay. Thank you.

18 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
19 Eaton.

20 Mr. Jones.

21 BOARD MEMBER JONES: Thank you, Madam Chair.

22 I think that's a good point that Mr. Eaton
23 brings up about the terms and conditions. And I want to
24 talk to you just about a few of the things that have been
25 brought forward today, and then give you a couple of

1 scenarios.

2 I think that when the LEA talks about the cease
3 and desist order, cease and desist orders is a very real
4 issue, and a cease and desist means lock up the gates,
5 nobody's coming in. If that, that is what a cease and
6 desist order means.

7 As an operator of an awful lot of facilities, I
8 will tell you that I never had a cease and desist order
9 because we were in compliance.

10 The, but it is a stay by appeal, it is stayed by
11 appeal because there is a due process.

12 When Kelly Smith talked about the suit because
13 of the permits, I want to just on the record just
14 clarify, the suit was on, I think the suit was on the
15 inventory of chronic violators that we were sued on
16 because the Board was not publicizing those. And now, as
17 a result of that, we do it twice a year as an item, and
18 then it's on our website.

19 And that was a valuable lawsuit because what it
20 did was it said let the world know who is chronically
21 violating the state minimum standards in the State of
22 California. And we've gone from 49 to 17. And the 17
23 have long-term gas violations. They've got the inability
24 to, or have resisted putting dollars together for
25 closure, post closure.

1 And of the 17, I think 16 are publicly owned and
2 operated, and most of them are located in rural
3 jurisdictions.

4 The thing that's important to remember, and it
5 may not be as predominant in Southern California, but I
6 will give you a, an example of how important a policy
7 is. Now I think that this policy needs to be tightened
8 up, but I do think it needs to be in place, and I will
9 give you a good example.

10 The Western Regional Landfill in Lincoln,
11 California took waste from a waste shed of Placer
12 County. As the City of Roseville and the City of
13 Rocklin, Stanford Ranch, back in the nineties started to
14 be the quickest growing community in the State of
15 California, maybe in the nation, one of the quickest
16 growing, as they went through their CEQA documents,
17 started identifying how, what the impact was going to be
18 of this new residential community, industry, schools, all
19 that stuff, obviously one of the issues is how to handle
20 solid waste.

21 Well at the time Western Regional Landfill had a
22 permit for 400 tons a day. And in 1989 they started the
23 process of revising that solid waste facility permit.
24 And in doing that, and in the public process, things like
25 a, a buffer zone was created, voted on, went to all the

1 cities and counties, everybody said, yeah, we're going to
2 increase the buffer zone. That thing is still in
3 litigation.

4 This Board approved that permit in 1997. That
5 process started in 1989. The housing came forward, the
6 kids came forward, the people came forward, the industry
7 came forward. Now they had an alternative, they could
8 have hauled that waste from Placer County to Kiefer Road
9 Landfill. How do you feel about that, Kelly?

10 MR. KELLY: I saw that coming.

11 BOARD MEMBER JONES: Well, but am I, is it
12 accurate? What's their other option? What other option
13 did they have? They didn't have another option because
14 the next closest landfill would have been in Lake Tahoe,
15 Truckee.

16 They went about starting the process of CEQA and
17 writing an RDSI and getting all the information in place,
18 and they got a permit eight years later.

19 If a policy does not exist where terms and
20 conditions can be put into a notice and order with very
21 strict timelines of procedures that have to be put in
22 place, and they need to be adhered to, then the
23 alternative is you shut the door.

24 And that's not -- believe me, Southern
25 California looks very different than Northern California.

1 And that was in one jurisdiction.

2 In Tuolumne County you had a landfill that was
3 shutting down, you had nowhere to bring the waste. It
4 took four and a half years to permit a material recovery
5 facility in there when everybody in the world wanted a
6 material recovery facility. It took four and a half
7 years.

8 So part of the reality of dealing with why you
9 have a policy in place here is to afford local government
10 the opportunity to manage its waste stream if a operator
11 wants, has 5,000, let's say he's got a permit that has a
12 5,000 ton per day capacity, and that operator is at 4,500
13 tons a day, and they're in the process of updating, but
14 they see that they want to go raid another area, pick up
15 another two or 3,000, 5,000; tons, then this is not an
16 appropriate policy. And I'll support that.

17 But, if their waste shed grows -- because
18 remember, there's not a house put in California that
19 hasn't gone through the CEQA process, or a housing
20 development or an office development that hasn't gone
21 through CEQA. And one of the issues is how are you going
22 to deal with your solid waste?

23 And it is always, we're going to recycle so
24 much, we're going to bring it here. And we're going to
25 use this facility, because this facility is the facility

1 for this waste shed.

2 By having this policy, as things start to grow
3 in a jurisdiction, and the waste shed grows, you need to
4 have something that's a stopgap that's in the middle that
5 gets you from existing permit conditions, which is the
6 number of vehicles and tonnage for those terms and
7 conditions, to what it's going to take to service an
8 expanding, growing community.

9 So there's a couple of ways we can look at it.
10 We can say we'll put "Do Not Enter" signs into
11 communities all over the state, say don't grow.

12 Because there's no way that -- you know, I've
13 tried, Mr. Paparian, I understand your frustration when
14 you say, you know, I wanted this to be a, to look a
15 certain way, this focus group; I wanted that information;
16 because as long as we have had discussions about the
17 permit process, I have asked, and people have tried, but
18 nobody's captured what it really takes from the day that
19 this thing starts the local process to when it gets in
20 front of this Board in time.

21 Nobody has ever really understood or wanted to
22 admit that this is not a 180 day process, this is not a
23 one year process, this is a five year process, this is a
24 ten year process, depending upon the facility.

25 And this policy is good government because it

1 gives a policy in place to take care of growing
2 situations. Now I won't support it just for competitive
3 interests, but I will support and will try to propose
4 something here a little later to take care of growth so
5 that that waste doesn't end up either down a ravine or
6 300 miles away, because that may be the next nearest
7 facility.

8 And San Diego County I think was here. There's
9 a good example of a facility in San Diego, two facilities
10 in San Diego County, pretty close to each other, that
11 when one of 'em raised its rate on how much they would
12 charge pickup trucks coming in to their facility, all
13 those pickup trucks decided to go to the other facility.

14 Well the other facility didn't have in its
15 permit the capability to take in that many more vehicles.
16 But it was the citizens that were driving the pickup
17 trucks that made the decision that they weren't going to
18 pay a couple of bucks more per truckload at one site,
19 that they would go across the road and go to the other
20 site.

21 That's where this becomes an appropriate policy,
22 because it's still in that same waste shed, those
23 vehicles were still driving the street and coming to that
24 area. They were separated, I don't know the exact
25 distance that they're separated by, but it's not a huge

1 difference between where those two facilities are
2 located, they're both relatively close.

3 But that's when, that's when a policy like this
4 makes sense. Because it managed. Because if you don't
5 give them the option of going somewhere else, but yet you
6 determine, the citizen decides he doesn't want to pay the
7 higher rate, then where do you think it's going to end
8 up? Any guesses? It's real. I've paid to clean up
9 roads through my facilities for years. It ends up in
10 gullies and it ends up in canyons. So we need to think
11 about it.

12 Thanks.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
14 Jones.

15 I had a couple of questions for staff. When
16 will you be, when are you planning on updating advisory
17 number 38?

18 MR. DE BIE: The staff don't have any current
19 plans to update advisory 38. Certainly it's, there's a
20 need to do it, especially because of the enforcement regs
21 coming into place that actually now replace elements of
22 that advisory.

23 The advisory was sort of an interim step towards
24 those regulations. There are still elements in advisory
25 38 that are not addressed in the statute or reg and, you

1 know, could potentially continue on in that advisory.

2 Certainly any decision made to change the
3 direction on PEP would influence a need to, you know,
4 revise the advisory.

5 I would, given only just the regulation aspect,
6 as part of our implementation of those regs we would, you
7 know, be addressing revisions of that advisory to deal
8 with the regulatory changes. And so that would occur in
9 the next few months as soon as we get approval from the
10 Office of Administrative Law. But it would only be, you
11 know, indicating those things that are now in reg, and
12 explaining the implementation issues on that. It
13 wouldn't carry over on other things.

14 BOARD CHAIR MOULTON-PATTERSON: Okay. Do you
15 plan on bringing forth an item to discuss permit
16 streamlining so that permit revisions can be brought
17 forward quickly so that it would eliminate the need for
18 PEP?

19 MR. DE BIE: That is one of the options that the
20 work group developed that we presented is that, certainly
21 one of the solutions is to set up a streamlined process
22 for permitting so that you don't need to do a notice and
23 order, you can go through a streamlined process to deal
24 with the stopgap or an interim process.

25 So we'll look for direction from the Board if

1 you wish us to go in that direction.

2 BOARD CHAIR MOULTON-PATTERSON: Okay. And just
3 a comment.

4 I, you know, in looking at the permit
5 enforcement policy work group members, and I don't want
6 any of my industry friends to take this wrong, because I
7 really take your comments very seriously and agree with
8 you a lot of times; but there's one, two, three, four,
9 five, six, seven, eight industry reps, and only one
10 environmental group representative, and then two LEA's,
11 you know.

12 Personally, I would like to see, and I know it's
13 difficult, but I'd like to see more local government,
14 more homeowners, more citizens, more environmental group
15 representation on our focus groups, our working groups,
16 whenever possible.

17 And I know of the difficulties. But just as one
18 Board member I'd certainly like to see that in the
19 future.

20 MR. DE BIE: And I think, just based on some of
21 the speakers today, staff now have at least two entities
22 to contact in the future --

23 BOARD CHAIR MOULTON-PATTERSON: Volunteers.

24 MR. DE BIE: -- to hopefully, that would
25 volunteer to help participate in policy development with

1 the staff.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you.

3 Senator Roberti is next.

4 BOARD MEMBER ROBERTI: Yes, Madam Chair. I
5 would like to make a motion that we modify our PEP policy
6 in the following manner:

7 BOARD MEMBER JONES: Can you pull that closer?

8 BOARD CHAIR MOULTON-PATTERSON: We can't hear,
9 Senator Roberti, I'm sorry.

10 BOARD MEMBER ROBERTI: Can you hear me now?

11 BOARD CHAIR MOULTON-PATTERSON: Yeah, that's
12 much better.

13 BOARD MEMBER ROBERTI: I'd like to make a motion
14 that we modify that we modify our PEP policy in the
15 following manner:

16 First, that we narrow the permit enforcement
17 policy to be used in emergencies only. Defined as an
18 emergency declared by the state or by a vote of the local
19 governing body.

20 Two, situations that the operator had no prior
21 knowledge of which would constitute a temporary emergency
22 which can justify operating outside the permit, if the
23 operator obtains a temporary authorization by the Board's
24 Executive Director to be followed by the Board's
25 consideration at the next Board meeting. And the

1 modified policy, staff should include a list of
2 reasonable emergencies where this policy may be used.

3 The length of -- number three. The length of
4 the permit violation begins the day the operator violates
5 the permit, not the day of concurrence by the Executive
6 Director of the Board.

7 Four, we would place a 45 day limit on the
8 amount of time that the permit can be violated, with
9 penalties automatically imposed if they exceed the date
10 certain.

11 Five, staff should bring back the modified
12 policy at the May meeting for adoption. Following that,
13 staff should put these new policy pieces into
14 regulation.

15 BOARD MEMBER PAPARIAN: I'll second that.

16 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
17 motion by Senator Roberti, seconded by Mr. Paparian.

18 BOARD MEMBER JONES: Madam Chair.

19 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

20 BOARD MEMBER JONES: Just a couple of questions.

21 The emergency is either a state or a local
22 governing body by vote did you say?

23 BOARD MEMBER ROBERTI: Yes, it would be a,
24 number one would be to narrow PEP to be used in
25 emergencies only, defined as, an emergency declared by

1 the state or by a vote of the local governing body.

2 BOARD MEMBER JONES: Okay. So an action of the
3 body?

4 BOARD MEMBER ROBERTI: Pardon?

5 BOARD MEMBER JONES: So -- okay.

6 BOARD MEMBER ROBERTI: Any elected body, yes.

7 BOARD MEMBER JONES: All right. And then the
8 second one was if the operator had no knowledge?

9 BOARD MEMBER ROBERTI: If the operator had no
10 knowledge of what would constitute a temporary emergency
11 which would justify, would justify operating out of the
12 permit, if the operator gets a temporary authorization by
13 the Executive Director followed by the Board's
14 consideration at the next meeting.

15 What we're thinking of is the situation, for
16 example, of where a roadway to a landfill is washed out
17 and there's no way of getting that refuse anywhere but to
18 another landfill. And I'm thinking in terms of temporary
19 emergencies and things of that nature.

20 BOARD MEMBER JONES: And then three was what?
21 I'm not, I mean I wrote it down but I didn't get it all.

22 BOARD MEMBER ROBERTI: No, I understand
23 completely. Yeah, this was very lengthy and complex.

24 The length of the permit violation begins the
25 day the operator violates the permit, not the date of

1 concurrence by the Executive Director of the Board. It
2 appears that at times that has been the policy.

3 BOARD MEMBER JONES: Oh, okay. And then 45
4 days --

5 BOARD MEMBER ROBERTI: 45 day limit on the
6 amount of time that the permit can be violated.

7 BOARD MEMBER JONES: Okay, just one more
8 question.

9 BOARD MEMBER ROBERTI: And penalties if they
10 exceed that date certain.

11 BOARD MEMBER JONES: And one other question. I
12 heard Mr. De Bie say that the state was going to come up
13 with a streamlined program or a streamlined permit
14 discussion. That doesn't take into -- what was your
15 answer here to the Chairwoman?

16 MR. DE BIE: I attempted to answer just the
17 opposite, that we had no intention to address that. It's
18 one of the options to address the PEP issue, and if the
19 Board directed us to look at a streamlined process we can
20 do that.

21 BOARD MEMBER JONES: All right.

22 MR. DE BIE: But we have no current plans to do
23 that.

24 BOARD MEMBER JONES: Just one piece that I want
25 to throw out as part of, as an issue because I think, I

1 can agree with a lot of what the Senator is saying, but
2 there's a problem, I think there's a problem, an issue.

3 While this Board may be able to quicken the pace
4 if they so choose, that doesn't have anything to do with
5 what the local process is. And it's the local process
6 that takes forever.

7 So to say 45 days, if there is growth in a
8 jurisdiction that has been identified as part of CEQA,
9 and the waste stream starts to hit that level and they
10 are in the process of trying to get a permit revised, and
11 they get, you know, and they're trying to work through
12 that, this says they have 45 days and then there's going
13 to be penalties.

14 So really, the option would be for the operator
15 to refuse to take in the waste stream and let them just
16 fend for themselves.

17 Because why would you take a penalty to try to
18 help somebody when you don't have to and you can let it
19 go other places? But then let somebody else deal with
20 the health and safety issues.

21 BOARD CHAIR MOULTON-PATTERSON: I have a
22 question for staff or Senator Roberti before I can vote
23 for the motion. Would you be bringing forth, would you
24 be producing some regulations so this policy can move
25 into regulations?

1 MS. NAUMAN: Yes, what I heard as part of the
2 Senator's motion was that this scheme that he described,
3 one through four, would then be reflected in an agenda
4 item coming forward in May so you could see how it looks.

5 BOARD MEMBER ROBERTI: Yes.

6 MS. NAUMAN: And then if it meets with your
7 approval and it's consistent, you know, our
8 interpretation and work on it is what the Senator had in
9 mind and the Board agrees, then we would move into the
10 regulatory development, the regulation development
11 process.

12 BOARD CHAIR MOULTON-PATTERSON: Is that your
13 intent, Senator?

14 BOARD MEMBER ROBERTI: Yes, that's my
15 understanding as well.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you.
17 Mr. Medina.

18 BOARD MEMBER MEDINA: Yes, I just had one
19 concern, and that was in the industry focus group, under
20 emergency they listed as a compelling reason for
21 operating outside of a permit's terms and conditions was
22 work stoppage or strike at another facility.

23 I could not support that as an emergency
24 condition for operating, so I just wanted to be sure
25 that, you know, I just have that concern that that would

1 not be included as an emergency, a work stoppage or
2 strike.

3 BOARD MEMBER ROBERTI: And that I'm not
4 including in my motion, as you know. And I would agree
5 with you that that would put us in the business of being
6 strikebreakers, and I wouldn't be too excited about that.

7 MS. NAUMAN: Madam Chair, may I also ask for
8 some further clarification? I just wanted to ask for
9 some additional clarification of the Senator's proposal.

10 If this motion, if your motion passes, would it
11 be your intent that the existing PEP policy would stay in
12 place until such time as the May item came forward and
13 then we developed the regulations, and the regulations
14 became effective, or is there something else that happens
15 during that period of time?

16 BOARD MEMBER ROBERTI: We modify the PEP policy
17 hopefully in May with a formal resolution. What I am --

18 MS. NAUMAN: Which would then be a policy --

19 BOARD MEMBER ROBERTI: Which would then be a
20 policy. And then we would move to step two which would
21 be, or step three, I guess, which would be a regulatory
22 process.

23 MS. NAUMAN: Development of the regulations.

24 BOARD MEMBER ROBERTI: Yes.

25 MS. NAUMAN: Thank you.

1 BOARD MEMBER ROBERTI: But until the May
2 meeting, this is a directive essentially to staff, I wish
3 we could go faster, but we can't.

4 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

5 BOARD MEMBER PAPARIAN: I'll just speak quickly.
6 I think the planets have aligned here for some action on
7 PEP.

8 What we've got before us is enough information
9 to convince me that the existing PEP is effectively an
10 underground regulation which we're not supposed to do.
11 And I think what Senator Roberti has suggested we do will
12 get us out from that conundrum and on the path to do
13 something that's appropriate, workable, and legal.

14 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
15 motion and a second. And I don't see any other speakers.

16 Would you please call the roll?

17 BOARD SECRETARY VILLA: Eaton.

18 BOARD MEMBER EATON: Pass temporarily.

19 BOARD SECRETARY VILLA: Jones.

20 BOARD MEMBER JONES: No.

21 BOARD SECRETARY VILLA: Medina.

22 BOARD MEMBER MEDINA: Yes.

23 BOARD SECRETARY VILLA: Pardon?

24 BOARD MEMBER MEDINA: Aye.

25 BOARD SECRETARY VILLA: Paparian.

1 BOARD MEMBER PAPARIAN: Aye.

2 BOARD SECRETARY VILLA: Roberti.

3 BOARD MEMBER ROBERTI: Aye.

4 BOARD SECRETARY VILLA: Moulton-Patterson.

5 BOARD CHAIR MOULTON-PATTERSON: Aye.

6 BOARD SECRETARY VILLA: Eaton.

7 BOARD CHAIR MOULTON-PATTERSON: What's your
8 vote, Mr. Eaton? Is it a pass or how do we record that?

9 BOARD MEMBER EATON: It's a pass, no vote.

10 BOARD CHAIR MOULTON-PATTERSON: No vote?

11 BOARD MEMBER EATON: Not voting.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you very
13 much, speakers. You all did a great job and we
14 appreciate you being here.

15 We'll move on to item 28. Thank you. A break
16 in the action here.

17 Number 28, Mr. Simpson.

18 MR. SIMPSON: Thank you, Madam Chair and
19 distinguished members of the Board.

20 Item 28 is consideration of approval of the 2000
21 annual report.

22 The annual report is required to be submitted to
23 the Governor and the legislator on March 1st, pursuant to
24 Section 40507 of the Public Resources Code.

25 The last annual report on record at the Board is

1 the 1996 report. State agencies were not required to
2 file an annual report in 1997 and 1998 when then-Governor
3 Wilson exempted state agencies from having to do so.

4 The Board did put together an extensive document
5 in 1999 titled, "Achievement Progress and Promise," the
6 ten year report on the Integrated Waste Management Act.

7 Senator Sher then allowed the substitution of
8 the ten year document in lieu of the 1999 annual report.

9 Now this year we have compiled the 2000 report
10 with extensive help from Rubia Packard in the Policy
11 Analysis Office. Ms. Packard's staff took the lead in
12 gathering all of the technical data, and documentation
13 from the various Board programs; while the Public Affairs
14 Office ran the concurrent path in the design and creative
15 effort of the slick and glossy document, and also the
16 creation of the on-line Web version of the report.

17 With additional direction from the Executive
18 Director's Office, it was suggested that we provide a
19 four color slick and glossy. That publication will be
20 for distribution to the Governor and the legislature.
21 And then we provide additional detailed information on
22 the Web version of that report that will not be in the
23 printed version.

24 The Web version will also provide dozens of
25 links to the extensive program information on our Web

1 site.

2 If the Board concurs, we would like to print a
3 limited run of the hard copy version of that report for
4 the Governor's office and the legislature, and suggest
5 that most of our stakeholders use the on-line version of
6 the report.

7 With me today is Chris Peck, supervising
8 information officer, with a long and broad institutional
9 history on the Board, and hopefully we can answer most of
10 your questions. And, of course, if you have specific
11 programmatic questions today, members of the executive
12 staff are here for you.

13 Staff recommend option one, approval of the 2000
14 annual report, and we stand ready for your direction.
15 Thank you.

16 THE REPORTER: Sir, your name?

17 MR. SIMPSON: Frank Simpson, Public Affairs
18 Office.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
20 Simpson. We have no speakers on this so I'll go straight
21 to the Board.

22 Mr. Paparian.

23 BOARD MEMBER PAPARIAN: I'll make a motion
24 unless anybody has any comments?

25 BOARD MEMBER MEDINA: Second.

1 BOARD MEMBER PAPARIAN: The motion is to approve
2 Resolution 2001-42, Approval of California Integrated
3 Waste Management Board 2000 Annual Report.

4 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
5 motion by Mr. Paparian -- oh, excuse me, I apologize.
6 Mr. Mohajer had a speaker slip, and I do apologize, on
7 28, and then you'd like to speak again on public
8 comments?

9 MR. MOHAJER: Right.

10 BOARD CHAIR MOULTON-PATTERSON: Okay. Can we
11 hold your motion, Mr. Paparian?

12 BOARD MEMBER PAPARIAN: Certainly.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you.

14 MR. MOHAJER: Madam Chair, as I was looking at
15 the report, and I looked at attachment one which refers
16 to the name of the RAP of the year winner, and I would
17 strongly recommend that you would expand this to also
18 include the trash cutter awards winner list as well,
19 because these are the local government, and they worked
20 so hard to try to comply with the requirement 939. And
21 if you list the RAP award winners, then you should also
22 have the trash cutter awards.

23 That's all. Thank you.

24 BOARD CHAIR MOULTON-PATTERSON: Thank you.

25 BOARD MEMBER MEDINA: Madam Chair, I just wanted

1 to make one friendly amendment to the report, and that
2 was that we have a statement in your letter and in the
3 text of the report in regard to environmental justice.

4 BOARD CHAIR MOULTON-PATTERSON: Okay. Did you
5 want to --

6 BOARD MEMBER MEDINA: Yes, I'd like to make that
7 amendment.

8 BOARD CHAIR MOULTON-PATTERSON: Yes?

9 BOARD MEMBER PAPARIAN: Yes, sounds good.

10 BOARD CHAIR MOULTON-PATTERSON: We're, I'm sorry
11 Mr. Mohajer, I didn't, I had a little trouble hearing
12 you.

13 Where did you want to put our trash cutter
14 awards?

15 MR. MOHAJER: Anyplace that staff recommends.
16 But since you have already listed the RAP award winners,
17 you could also make an attachment for the trash cutters
18 award winners.

19 BOARD CHAIR MOULTON-PATTERSON: Do we have our
20 RAP award winners in here?

21 MR. MOHAJER: That's on attachment one.

22 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
23 you. I can't find it right now.

24 I think that's a good idea.

25 MR. SIMPSON: I'm sorry?

1 BOARD CHAIR MOULTON-PATTERSON: I think that's a
2 good idea.

3 MR. SIMPSON: Yes.

4 BOARD CHAIR MOULTON-PATTERSON: Both ideas, yes?

5 BOARD MEMBER PAPARIAN: Yes. And Madam Chair,
6 we also had a conversation last week and we followed that
7 up where there's going to be some mention of the
8 hierarchy that we're supposed to be operating under.

9 MR. PECK: That's correct, Chris Peck, I'm also
10 with the Public Affairs Office.

11 We thought that we, it would be appropriate to
12 mention the heirarchy. There is actually a phrase that
13 talks about reducing waste and recycling in the very
14 first section under who we are, and we can make that a
15 little clearer to reflect the creation of the hierarchy
16 of AB 939.

17 And I believe also, Mr. Paparian, that we talked
18 about the possibility of adding a reference in the
19 division section at the very end in terms of where we're
20 going to be going, things we're going to be looking at in
21 reference to the Auditor General's report. Since that is
22 not discussed elsewhere and that did come up at the very
23 end of the year, and we thought we might have something
24 forward looking about the Board's addressing the concerns
25 that were raised in that report.

1 BOARD CHAIR MOULTON-PATTERSON: I would just
2 like to say I think you did a really good job.

3 And Mr. Paparian, did you want to make a motion
4 with those changes? And Mr. Medina, I think we have a
5 second?

6 BOARD MEMBER MEDINA: Yes.

7 BOARD MEMBER PAPARIAN: Do I need to restate
8 it?

9 BOARD CHAIR MOULTON-PATTERSON: Well no, just
10 with the changes.

11 BOARD MEMBER PAPARIAN: I make the motion with
12 the changes.

13 BOARD MEMBER MEDINA: Second it.

14 BOARD CHAIR MOULTON-PATTERSON: Okay, we're
15 getting tired.

16 Okay. We have a motion by Mr. Paparian, second
17 by Mr. Medina to adopt the annual report.

18 Please call the roll.

19 BOARD SECRETARY VILLA: Eaton.

20 BOARD MEMBER EATON: Aye.

21 BOARD SECRETARY VILLA: Jones.

22 BOARD MEMBER JONES: Aye.

23 BOARD SECRETARY VILLA: Medina.

24 BOARD MEMBER MEDINA: Aye.

25 BOARD SECRETARY VILLA: Paparian.

1 BOARD MEMBER PAPARIAN: Aye.

2 BOARD SECRETARY VILLA: Roberti.

3 (No response.)

4 BOARD SECRETARY VILLA: Moulton-Patterson.

5 BOARD CHAIR MOULTON-PATTERSON: Aye. Okay.

6 Last item of business -- thank you very much, Mr.

7 Simpson, is public comments. And I have Mr. Mohajer's

8 speaker slip here.

9 MR. MOHAJER: Madam Chair, I apologize for, I

10 should have spoken about this as part of item 16

11 yesterday.

12 But based on the discussion that came out as far

13 as when we were talking about the PEP working group and

14 that we had only one representative of the environmental

15 group and nine of the waste industry, now you can see why

16 I was feeling that, what I said yesterday, that there was

17 no local government representative in that working

18 group.

19 BOARD MEMBER PAPARIAN: Mr. Mohajer, you know

20 where our website is, right?

21 MR. MOHAJER: Absolutely.

22 BOARD MEMBER PAPARIAN: We've got a calendar on

23 the website that includes a lot of our upcoming meetings,

24 and I've been working hard, and I know the Interim

25 Executive Director has been working hard to make sure

1 that everything that's coming up is on that calendar.

2 And being the insider that you are, I know that you can
3 find the things that are going to be of interest to you
4 and pursue those.

5 MR. MOHAJER: I understand, yes, but that's not
6 what I'm trying to mention today.

7 Basically, just trying to expedite it, I wrote a
8 note over here. I said that in reference to item number
9 16 the status of the diversion study guide, the
10 certification form include the guide requirement that
11 jurisdiction to certify the information under penalty of
12 perjury.

13 This sounds more like a rulemaking rather than a
14 guide. Therefore, I request that we would be provided
15 with a written explanation as to what the Waste Board
16 means, and explain the differences between the
17 guidelines, procedures, policies, and regulations and
18 where this proposed guidelines falls within those four
19 definitions.

20 Thank you.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
22 Mohajer.

23 Okay. This meeting is adjourned. Thank you.

24 Oh, Senator Roberti, did you want to vote on
25 number 28, the annual report?

1 BOARD MEMBER ROBERTI: Aye.

2 BOARD CHAIR MOULTON-PATTERSON: Aye, okay. If
3 you would please record Senator Roberti for aye on number
4 28.

5 Thank you all for all of your work at this
6 meeting.

7 (Thereupon the foregoing was concluded at
8 4:46 p.m.)

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CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

I, DORIS M. BAILEY, a Certified Shorthand Reporter and Registered Professional Reporter, in and for the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing proceedings in shorthand writing; and thereafter caused my shorthand writing to be transcribed by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand as a Certified Shorthand Reporter and Registered Professional Reporter on the 2nd day of April, 2001.

Doris M. Bailey, CSR, RPR, CRR
Certified Shorthand Reporter
License Number 8751